TITLE IV OF H.R. 11, THE FAMILY REINFORCEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 11

TO STRENGTHEN THE RIGHTS OF PARENTS

MARCH 16, 1995

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TITLE IV OF H.R. 11, THE FAMILY REINFORCEMENT ACT

THURSDAY, MARCH 16, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Blute, Fox, Scarborough, Maloney, and Mascara.

Staff present: J. Russell George, staff director; Mark Uncapher, professional staff member; Andrew G. Richardson, clerk; Ronald Stroman, minority deputy staff director; Donald Goldberg, minority assistant to counsel; David McMillen, minority professional staff member; and Elisabeth Campbell, minority staff assistant.

Mr. HORN. A quorum being present, the subcommittee hearing will begin. We have brief opening statements from myself, the ranking minority member, and Mr. Fox. We will go in order since our distinguished first witness is in the room.

The Subcommittee on Government Management, Information, and Technology is meeting to solicit from all interested parties comments on part of the Contract with America, the Family Reinforcement Act.

Title IV, the Family Privacy Protection provision, would prohibit the asking of any of eight different kinds of privacy-impact questions unless first approved by parents or guardians. The legislation attempts to achieve the right balance between government power and individual rights. H.R. 11 would emphasize and recognize parents' role in keeping families strong.

We must remain sensitive to the difficulty and the delicacy of the balance we seek. Our job is to report a bill that will not endanger minors' health or safety nor handicap law enforcement operations, yet safeguard the primacy of parents' authority.

Parental consent requirements and access have been a matter of Federal law since 1974. However, that has grown by bits and pieces, and their scope has been narrow and peculiar to specific legislation. Title IV would cover every survey, analysis, or evaluation that asks minor questions defined to be of a private nature, which is funded in whole or part by a Federal agency or department.

For background, we asked a cross-section of educational, health, and related professional associations to comment or suggest

changes to the bill. We received a wide range of responses, which will be included in the record.

Today, we will hear from several individuals with an interest in the kind of issues Title IV would cover. With us are a U.S. Senator, a research scientist, a family private authority, an Associate Director of the Commerce Department's Bureau of the Census, and the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs. We also invited representatives of the Department of Health and Human Services, but they declined to participate.

For all who accepted and are here today, we look forward to your testimony and to working with you to make Title IV an effective piece of legislation.

I now yield to the ranking minority member on the committee, Mrs. Maloney, a Representative from New York.

[The text of H.R. 11 follows:]

H.R. 11

To strengthen the rights of parents.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mrs. VUCANOVICH, Mr. THOMAS of California, and Mr. WELLER (for themselves, Mr. ROYCE, Mr. MCINTOSH, Mr. CRANE, Mr. FORBES, Mr. CUNNINGHAM, Mr. ROHRABACHER, Mr. DORNAN, Mr. HASTERT, Mr. BLUTE, Mr. WELDON of Pennsylvania, Mr. BARTLETT of Maryland, Mr. ZIMMER, Mr. LINDER, Mr. BACHUS, Mr. SMITH of Texas, Mr. COOLEY, Mr. GREENWOOD, Mr. HOKE, Mr. SAXTON, Mr. TAYLOR of North Carolina, Mr. LARGENT, Mr. KIM, Mr. BALLENGER, Mr. CALLAHAN, Mrs. ROUKEMA, Mr. CHRYSLER, Mr. HANCOCK, Mr. NUSSLE, Mr. BAKER of Louisiana, Mr. STEARNS, Mr. ROTH, Mr. STOCKMAN, Mr. SMITH of Michigan, Mr. BAKER of California, Mr. SHAW, Mr. HERGER, Mr. SENSENBRENNER, Mrs. FOWLER, Mr. EMERSON, Mr. HUTCHINSON, Mr. HEINEMAN, Mr. ENGLISH of Pennsylvania, Mr. HOSTETTLER, Mr. JONES, Mr. ENSIGN, Mr. TIAHRT, Mrs. MYRICK, Mrs. CUBIN, Mr. KINGSTON, Mr. EWING, Mr. HASTINGS of Washington, Mr. GANSKE, Mr. WELDON of Florida, Mr. COBURN, Mr. LEWIS of Kentucky, Mr. BUNNING of Kentucky, Mr. INGLIS of South Carolina, Mr. LIGHTFOOT, Mr. ISTOOK, Mr. CALVERT, Mr. CREMEANS, Mr. KNOLLENBERG, Mr. SCHAEFER, Mr. BILIRAKIS, Mr. HAYWORTH, Mr. FOX, Mr. RADANOVICH, Mr. GOODLING, Mr. WAMP, Mr. GILCHREST, Mr. SOLOMON, Mr. BLILEY, Mr. DOOLITTLE, Mr. CAMP, Mr. PACKARD, Mr. STUMP, Mr. GILMAN, Mr. MILLER of Florida, Mr. LATOURETTE, Mr. FLANAGAN, Mr. BURR, Mr. LATHAM, Ms. MOLINARI, Mr. GUNDERSON, Mr. THORNBERRY, Mr. RIGGS, Mr. ALLARD, Mr. GOODLATTE, Mr. CHRISTENSEN, Mr. HILLEARY, Mr. WICKER, Mr. BONO, Mr. FRISA, Mr. SMITH of New Jersey, Mr. TALENT, Mr. SHADEGG, Mrs. JOHNSON of Connecticut, Mr. CANADY, Mr. MCCOLLUM, Mr. SHAYS, Mr. BARTON of Texas, Mr. BARR, Mr. ARMEY, Mr. WALDHOLTZ, Mr. TATE, Ms. DUNN, Mr. MICA, Mr. MCHUGH, Mr. EVERETT, Mr. ROTH, Mr. CRAPO, Mr. PAXON, Mr. YOUNG of Florida, Mr. COBLE, Mr. EHRLICH, and Mrs. MEYERS of Kansas) introduced the following bill; which was referred as follows:

TITLES I–II, REFERRED TO THE COMMITTEE ON WAYS AND MEANS

TITLE III, REFERRED TO THE COMMITTEE ON THE JUDICIARY

TITLE IV, REFERRED TO THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

TITLE V, REFERRED TO THE COMMITTEE ON WAYS AND MEANS, AND IN ADDITION TO THE COMMITTEE ON THE JUDICIARY, FOR A PERIOD TO BE SUBSEQUENTLY DETERMINED BY THE SPEAKER, IN EACH CASE FOR CONSIDERATION OF SUCH PROVISIONS AS FALL WITHIN THE JURISDICTION OF THE COMMITTEE CONCERNED

JANUARY 26, 1995

Additional sponsors: Mr. BURTON of Indiana, Mr. NORWOOD, Mr. WALKER, Mr. LIVINGSTON, Mr. SAM JOHNSON of Texas, Mr. COLLINS of Georgia, Mrs. SEASTRAND, Mr. SKEEN, Mr. COX, Mr. DREIER, Mr. DELAY, Mr. POMBO, Mr. PETERSON of Minnesota, and Mr. SALMON

A BILL

To strengthen the rights of parents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Reinforcement Act".

TITLE I—ADOPTION ASSISTANCE

SEC. 101. REFUNDABLE CREDIT FOR ADOPTION EXPENSES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. ADOPTION EXPENSES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year the amount of the qualified adoption expenses paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) with respect to the adoption of a child shall not exceed $5,000.

"(2) INCOME LIMITATION.—The amount allowable as a credit under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's adjusted gross income exceeds $60,000, bears to

"(B) $40,000.

"(3) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) GRANTS.—No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

"(c) QUALIFIED ADOPTION EXPENSES.—For purposes of this section, the term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child by the taxpayer and which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement. The term 'qualified adoption expenses' shall not include any expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse.

"(d) MARRIED COUPLES MUST FILE JOINT RETURNS.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ", or from section 35 of such Code".

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 35. Adoption expenses.
"Sec. 36. Overpayments of tax.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE II—ELDERCARE ASSISTANCE

SEC. 201. REFUNDABLE CREDIT FOR CUSTODIAL CARE OF CERTAIN DEPENDENTS IN TAXPAYER'S HOME.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. CREDIT FOR TAXPAYERS WITH CERTAIN PERSONS REQUIRING CUSTODIAL CARE IN THEIR HOUSEHOLDS.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual who maintains a household which includes as a member one or more qualified persons, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to $500 for each such person.

"(b) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED PERSON.—The term 'qualified person' means any individual—

"(A) who is—

"(i) a father or mother, or stepfather or stepmother, of the taxpayer, his spouse, or his former spouse, or

"(ii) a father or mother, or stepfather or stepmother, of an individual described in clause (i),

"(B) who has been certified by a physician as—

"(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living (as defined in paragraph (2)), or

"(ii) having a similar level of disability due to cognitive impairment, and

"(C) who has as his principal place of abode for more than half of the taxable year the home of the taxpayer.

"(2) ACTIVITIES OF DAILY LIVING.—For purposes of paragraph (1), each of the following is an activity of daily living:

"(A) BATHING.—The overall complex behavior of getting water and cleansing the whole body, including turning on the water for a bath, shower, or sponge bath, getting to, in, and out of a tub or shower, and washing and drying oneself.

"(B) DRESSING.—The overall complex behavior of getting clothes from closets and drawers and then getting dressed.

"(C) TOILETING.—The act of going to the toilet room for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes.

"(D) TRANSFER.—The process of getting in and out of bed or in and out of a chair or wheelchair.

"(E) EATING.—The process of getting food from a plate or its equivalent into the mouth.

"(3) PHYSICIAN.—The term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the jurisdiction in which he makes the determination under paragraph (1).

"(c) SPECIAL RULES.—For purposes of this section, rules similar to the rules of paragraphs (1), (2), (3), and (4) of section 21(e) shall apply.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting "or 36" after "section 35".

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 36 and inserting the following:

"Sec. 36. Credit for taxpayers with certain persons requiring custodial care in their households.

"Sec. 37. Overpayments of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE III—CHILD PROTECTION

SEC. 301. INCREASED PENALTIES FOR USE OF A COMPUTER IN SEXUAL CRIMES AGAINST CHILDREN.

The United States Sentencing Commission shall amend the sentencing guidelines applicable to section 2252 of title 18, United States Code, to increase the offense level by 2 levels if a computer was used in the transporting or shipment of the visual depiction.

SEC. 302. MANDATORY MINIMUM SENTENCE FOR PROSTITUTION OF CHILDREN.

Section 2423 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "or imprisoned not more than ten years, or both." and inserting "and imprisoned not less than 3 nor more than 10 years."; and

(2) in subsection (b), by striking ", imprisoned not more than 10 years, or both." and inserting "and imprisoned not less than 3 nor more than 10 years.".

SEC. 303. SENTENCING GUIDELINES RELATING TO PROSTITUTION OF CHILDREN.

The United States Sentencing Commission shall amend the sentencing guidelines applicable to section 2423 of title 18, United States Code, to assure that an increase in the age of the child who is the victim of the offense does not result in a lighter punishment.

SEC. 304. INCREASE IN PENALTY FOR SEXUAL ABUSE OF A MINOR.

Section 2243(a) of title 18, United States Code, is amended by inserting "less than 3 nor" after "imprisoned not".

SEC. 305. INCREASE IN PENALTY FOR SEXUAL ABUSE OF A WARD.

Section 2243(b) of title 18, United States Code, is amended by striking "more than one year" and inserting "less than 3 nor more than 15 years".

TITLE IV—FAMILY PRIVACY PROTECTION

SEC. 401. FAMILY PRIVACY PROTECTION.

(a) Notwithstanding any other provision of law, no program or activity funded in whole in or part by any Federal department or agency shall require a minor to submit to a survey, analysis, or evaluation that reveals information concerning:

(1) parental political affiliations;

(2) mental or psychological problems potentially embarrassing to the minor or his family;

(3) sexual behavior or attitudes;

(4) illegal, anti-social, self-incriminating, or demeaning behavior;

(5) appraisals of other individuals with whom the minor has a familial relationship;

(6) relationships that are legally recognized as privileged, such as those with lawyers, physicians, and members of the clergy;

(7) the minor's household income, other than information required by law to determine eligibility for participation in a program or for receiving financial assistance from a program; or

(8) religious beliefs,

without the written consent of at least one of the minor's parents or guardians or, in the case of an emancipated minor, the prior consent of the minor himself.

(b) Subsection (a) shall not apply to tests intended to measure academic performance except to the extent that such tests would require a minor to reveal information listed in paragraphs (1) through (6) of subsection (a).

SEC. 402. NOTIFICATION PROCEDURES.

A department or agency which, in whole or in part, supports a program or activity involving any survey, analysis, or evaluation of minors shall establish procedures by which the department or agency, or its grantees, shall notify minors and their parents of their rights under this title.

SEC. 403. EFFECTIVE DATE.

This title shall take effect 30 days after the date of the enactment of this Act.

TITLE V—CHILD SUPPORT ENFORCEMENT

SEC. 501. ENFORCEMENT OF CHILD SUPPORT ORDERS.

(a) IN GENERAL.—Section 1738A of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "or child support order" after "child custody determination";

(2) in subsection (b)—

(A) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) 'child support order' means a judgment, decree, or order of a court requiring the payment of money, whether in periodic amounts or lump sum, for the support of a child and includes permanent and temporary orders, initial orders and modifications, on-going support and arrearages;";

(3) in subsection (c)—

(A) in the first sentence by inserting "or child support order" after "child custody determination"; and

(B) in paragraph (2)(D)(i) by inserting "or support" after "determine the custody";

(4) in subsection (d), by striking out "the requirement of subsection (c)(1) of this section continues to be met and"; and

(5) in subsection (f)(2), by inserting "as described under subsection (d) of this section," after "no longer has jurisdiction,".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The heading for section 1738A of title 28, United States Code, is amended to read as follows:

"SEC. 1738A. FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATIONS AND CHILD SUPPORT ORDERS.".

(2) The table of sections for chapter 115 of title 28, United States Code, is amended by striking out the item relating to section 1738A and inserting in lieu thereof:

"1738A. Full faith and credit given to child custody determinations and child support orders.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on and after the date of the enactment of this Act.

SEC. 502. UNIFORM TERMS IN ORDERS.

(a) IN GENERAL.—Section 452(a) of the Social Security Act (42 U.S.C. 652(a)) is amended—

(1) in paragraph (9), by striking "and" after the semicolon;

(2) in paragraph (10), by striking the period at the end of the 2nd sentence and inserting "; and"; and

(3) by adding at the end the following:

"(11) develop, in conjunction with State executive and judicial organizations, a uniform abstract of a child support order, for use by all State courts to record in each child support order—

"(A) the date support payments are to begin under the order;

"(B) the circumstances upon which support payments are to end under the order;

"(C) the amount of child support payable pursuant to the order expressed as a sum certain to be paid on a monthly basis, arrearages expressed as a sum certain as of a certain date, and any payback schedule for the arrearages;

"(D) whether the order awards support in a lump sum (nonallocated) or per child;

"(E) if the award is in a lump sum, the event causing a change in the support award and the amount of any change;

"(F) other expenses covered by the order;

"(G) the names of the parents subject to the order;

"(H) the social security account numbers of the parents;

"(I) the name, date of birth, and social security account number (if any) of each child covered by the order;

"(J) the identification (FIPS code, name, and address) of the court that issued the order;

"(K) any information on health care support required by the order; and

"(L) the party to contact if additional information is obtained.".

SEC. 503. WORK REQUIREMENT FOR NONCUSTODIAL PARENTS WITH CHILD SUPPORT ARREARAGES.

Section 466(a) of the Social Security Act (42 U.S.C. 666(a)) is amended by inserting after paragraph (11) the following:

"(12) Procedures requiring that—

"(A) upon a determination by the State agency referred to in section 402(a)(3) that the noncustodial parent of any child who is applying for or receiving aid under the State plan approved under part A owes child support (as defined in section 462(b)) with respect to the child, is in arrears in the payment of such support in an amount that is not less than twice the amount of the monthly child support obligation, is not incapacitated, and is not subject to a court-approved plan for payment of such arrearage, the State agency referred to in section 402(a)(3) send to the noncustodial parent a letter notifying the noncustodial parent that the noncustodial parent—

"(i) is required to pay child support with respect to the child; and

"(ii) is subject to fines and other penalties for failure to pay the full amount of such support in a timely manner; and

"(B) if, by the end of the 30-day period that begins with the date the letter is sent pursuant to subparagraph (A), the amount of the arrearage has not decreased by at least a percentage amount specified by the State agency, the State seek a court order requiring the noncustodial parent—

"(i) to participate in a job search program established by the State, for not less than 2 weeks and not more than 4 weeks; and

"(ii) if, by the end of the 30-day period beginning on the date the order is entered, the amount of the arrearage has not decreased by at least a percentage amount specified by the State agency, to participate in a work program established by the State, for not less than 35 hours per week (or, if the program also requires job search, for not less than 30 hours per week).".

Mrs. MALONEY. Thank you very much, Mr. Chairman. I am glad you're holding this hearing today. Hopefully, we can clarify the intent and consequences of this legislation.

The legislation we are considering today is not new. This, or similar language, has been included in education legislation for 20 years. What is new about this legislation is that it expands the application of those provisions to all programs receiving Federal funds.

Frankly, Mr. Chairman, I'm a bit puzzled by the vagueness of the language, the breadth of application, and the intent of this legislation. I can understand your concern about asking questions about sexual behavior, but I'm surprised that you want to prohibit students being asked about their parents' political affiliation. Voter registration lists are, after all, a matter of public record. I hardly think political affiliation is a sensitive topic.

While I can understand some of your concerns and am surprised by others, I am befuddled by much of the language in this legislation. This language uses vague terms, like "demeaning behavior" "or potentially embarrassing" problems. I suspect the lawyers could spend a lifetime arguing over what does and does not fit within those terms.

Worse yet, this legislation is designed to "protect" minors but nowhere in the legislation does it say what a minor is. Are we talking about 16, under 18, under 21? I have a paper I would like to submit for inclusion in the record titled "What is a Child?" Professor Lorraine Klerman discusses the number of definitions used in law, religion, and science. In none of these areas is there any consensus on what is a child.

It seems to me that considerable work should be put into clarifying this legislation before we consider it seriously.

I don't think the drafters of this legislation did their homework. At your hearing on Tuesday, one of your witnesses quoted Dr. Deming saying, "If you want to understand what is going on, talk to the people doing the job." Clearly, the drafters of this legislation didn't do that. If you talk to the people who do surveys in the Federal Government, or under contract to the Federal Government, they will tell you that they do get permission when asking sensitive questions. Unfortunately, we have only one representative of the Federal survey community at this hearing, and no one from the private sector.

I am disappointed, however, that neither the Justice Department nor the Department of Education is here. This language, or similar language, has been included in education language for some time and it would be useful to understand that experience before we apply it to all programs receiving Federal aid. I also think it is important to consider what the effect of this will be on law enforcement agencies. Will they be prohibited from asking children about parental abuse without the parents' consent?

Finally, Mr. Chairman, let me share with you what I see as a supreme irony of this legislation. You want to protect children from being asked about their parents' income. At the same time, the Republican party—the new majority—wants to means-test free school lunches. So, every time a child walks through the cafeteria line and doesn't pay, he or she announces his or her parents' income.

Mr. Chairman, this legislation needs a great deal of work. There is no clear reason for it. I would be happy to work with you on this but, as it stands now, passing this legislation, I believe, needs a great deal more work.

[The information referred to follows:]

WHAT IS A CHILD?

LORRAINE V. KLERMAN, UNIVERSITY OF ALABAMA AT BIRMINGHAM

ROOM 112 MORTIMER JOHNSON HALL, BIRMINGHAM, AL 35294-2010

KEY WORDS: Child, definitions, biology, psychology, law, social welfare

The definition of a child has changed over time—and now varies across disciplines, jurisdictions, and agencies. Some of these differences in definition are productive, leading to stimulating arguments about when mature judgement can be expected in specific spheres of life. But in some domains, differences in definitions by chronological age may lead to confusion or inability to secure needed information easily. This paper will mention briefly some historical trends; describe in somewhat greater length how several fields define children and youth; and review the differences in age categorizations used by three federal data-gathering and data-analyzing agencies.

A HISTORICAL OVERVIEW

One indication of how perceptions of childhood have changed over time can be found in portraits of families painted before the 19th century. Even very young children are dressed in clothing which is just adult styles in very small sizes. The concept of childhood as a period requiring special clothing had not yet developed!

Those of you who are familiar with the adolescent field know that the concept of adolescence as a distinct period of life did not emerge until the turn of the century. In 1904, Granville Stanley Hall, a professor of psychology at Clark University, published a two volume study entitled, *Adolescence: Its Psychology and Its Relations to Anthropology, Sex, Crime, Religion, and Education.* Although adolescence with its physiological and psychological changes obviously existed prior to the publication of this work, Hall appears to have been the first psychologist to seriously study this period. In that sense, he created adolescence.

Adolescence is a relatively recent creation not only in terms of its study as a chronological period; but also in terms of the way society views this period. Our forbearers expected that as soon as children were able to learn the skill necessary for employment, they would obtain jobs and be considered adults. Childhood was a gradual passage from infancy into adulthood, without an in-between period when youth were capable of some adult activities, but considered too immature to undertake them.

The elongation of the period of dependency and the expansion of the years of compulsory education has also contributed to the concept of an adolescent period. Although a lengthy period of education is now usually perceived as necessary for the acquisition of essential skills, it can also be viewed as a way of limiting the number of individuals in the job market. Perhaps we "warehouse" children in schools because there are no legitimate functions for them in today's adult world. Clearly, we perceive children and youth very differently today than did the portrait painters of the 18th century or Hall at the beginning of the 20th.

DEFINTIONS USED IN SEVERAL FIELDS

The simplest definition of the term, child, is perhaps the one that is most used. It is the one that is devoid of any connotation of age, but rather describes a relationship. A son or a daughter is a *child* of the parents, regardless of age. Various disciplines, however, subdivide the period from birth until adulthood into distinct periods, label these periods or stages, and sometimes define them in terms of chronological age.

Biology

Perhaps the most obvious changes between birth and adulthood are in appearance, particularly size and sexual characteristics. While most growth after infancy and prior to adulthood is relatively gradual, a sudden spurt in height and weight starts around age 10 and a half in girls and age 13 in boys. For the biologists, the beginning of this growth spurt signals the beginning of adolescence. The development of primary and secondary sex characteristics occurs at about the same time, perhaps even more obviously signifying the end of childhood.

Psychology

Some of the best known descriptions of the stages of childhood are those of the psychologists. Freud's work focuses on sexual interest, labeling periods with names such as oral, anal, and genital, and pre-latency and latency.

Erickson wrote about the eight ages of man: oral-sensory, muscular-anal, locomotor-genital, latency, puberty and adolescence, young adulthood, adulthood, and maturity. Each of these ages have tasks which must be mastered if the individual is to progress. So, for example, the period of puberty and adolescence is characterized by the need to establish an identity and to avoid or overcome role confusion; while the period of young adulthood requires an ability to develop intimacy and avoid isolation.

Law

The legal profession has many precise definitions of children, usually couched in terms of chronological age. Some of these definitions are written into federal law and thus are the same for all areas of the United States. But other legal definitions vary among states and even among smaller jurisdictions, such as counties.

In 1971, the 26th amendment to the federal constitution was passed. It stated, "The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on the account of age." This age was probably chosen because it was the age at which young men became elgibile for the draft. There was considerable feeling that if you asked someone to be willing to sacrifice his life for his country, you should at least give him the privilege of deciding how and by whom that country was to be governed. These two federal cut-off points, the voting age and the draft age, point to age 18 as the beginning of adulthood. The federal constitution, however, also specifies the minimum age for three positions: 25 to become a member of the House of Representatives; 30 to become a Senator; and 35 to become president, suggesting ages at which higher levels of judgement are expected. Although 18 appears to signal the end of childhood in two areas of federal law, it seems contradicted by the assignment of 21 as the minimum drinking age.

While federal law sets some age standards, state laws establish many more. For example, states determine the age of majority in their own jurisdictions. The age of majority is the age at which an individual becomes an adult in the eyes of the law. According to the American Civil Liberties Union, the terms infant, child, minor,

and juvenile are used interchangeably to denote those who have not yet attained the age of majority. In almost all states the age of majority is 18, but prior to the passage of the 26th amendment it was usually 21. *Emancipated* minors are individuals, younger than the state's age of majority, who are considered adults because, depending on the state, they are married, in the military, self-supporting, unmarried mothers, or pregnant.

Just as federal law treats drinking differently from most other age-related duties and privileges; state laws do not always use the age of majority as the time at which certain adult activities are allowed. Often the age is lowered, "with parental consent." For example, in a few states, youth as young as 14 can marry with parental consent at 16 or 17. Almost all states allow marriage *without* parental consent only at age 18 or older.

With the consent of a parent of guardian, a few states issue a juvenile driver's license to youth as young as 13 (Montana) or 14, although more offer such licenses at 15 or 16. Regular driver's licenses are often available at age 16, sometimes with and sometimes without the completion of an approved driver education course; but, with the exception of Virginia, all states offer a full driver's license by age 18.

Perhaps the most complex area of age-related state law, as well as the one with the most potential for causing serious problems, is that which deals with the age at which youth can secure reproduction-related care without the consent of their parents. Prior to the 1960's, all forms of medical care provided to a minor—usually under age 21—including treatment of sexually-transmitted diseases, provision of contraceptives, and access to abortions, required the consent of a parent. The first break-through came in the area of STDs. By the end of the 1960s, all states had enacted statutes allowing STDs to be treated without parental consent. Currently, minors can obtain treatment for most conditions without parental consent if the individual is mature enough to give the same kind of informed consent that would be expected of an adult. This has become known as the "*mature minor*" rule.

In regard to contraception, the Supreme Court in 1977 held that minors had a constitutional right of privacy and that statues making it a criminal offense to sell contraceptives to minors contravened that right. In 1978, Congress amended the Family Planning Act (Title X of the Public Health Service Act) to include adolescents specifically. The Reagan Administration's so-called "squeal rule," the proposed regulations to notify parents when a minor daughter received contraceptive services, was found unconstitutional by the courts. Thus today, youth is no barrier to the provision of contraceptives in federally-funded facilities; but many hospital clinics and private physicians are not covered by these rules and may refuse to prescribe contraceptives to minors.

The question of whether and when a young woman may obtain an abortion without parental consent has an even more stormy history. Although Roe v. Wade gave women a right to abortion, at least in the first and second trimesters of pregnancy; later decisions uphold the right of states to limit abortions to minors by requiring the consent of one or both parents if the state provided a judicial bypass. The current interpretation is that in the absence of a state statue, a mature minor may consent to an abortion as she would to any other medical procedure. Where statues do exist, states must allow a mature minor to present herself to a judge and, providing that she understands her situation and the risks of an abortion, she has the right to a court order permitting the abortion.

Laws regarding sexual intercourse also require a determination of when a young woman is a child. Many states have laws making intercourse with a female below a certain age, usually 16, a crime, statutory rape, regardless of the female's consent. Some states will not prosecute, however, if the male is close to her age, perhaps under 25.

Social Welfare

All social welfare agencies that provide services to children define eligibility by chronological age. The situation is confusing, however, because federal laws may not only establish minimum age limits; but also allow states the option of raising these limits. For example, federal law has established eligibility for the Aid to Families with Dependent Children (AFDC) program up to a child's 18 birthday; but a state may chose to continue payments until the child is 19, if he or she is a full-time student in a secondary or technical school and may reasonably be expected to complete the program before age 19.

The large number of state options make age requirements for receipt of Medicaid particularly complex. States must provide Medicaid to all persons receiving cash assistance under AFDC. They may cover adolescents up to ages 18, 19, 20, or 21, and Ribicoff children, those who meet the AFDC standards on income and resources but not as a dependent child. States are also required to provide Medicaid to pregnant

women and to children under the age of six with family incomes below 133 per cent of the federal poverty income guidelines. In addition, states must phase in coverage of all children under age 19 whose family income is below 100 per cent of poverty. Eighteen-year olds will not be covered until the year 2002.

The Special Supplemental Food Program for Women, Infants, and Children (WIC) also defines children as those under the age of six. Given other, more expansive definitions of children, this program might more accurately be called the Special Supplemental Food Program for Women, Infants, and Preschoolers, or WIP.

Other Definitions

This review does not exhaust the definitions of children. Educational systems require children to start first grade by age 7 as a maximum. The Federal Aviation Administration mandates that "children under the age of 15 may not sit in an exit row," thus suggesting that individuals 15 and over are not children in the eyes of the FAA. And religious groups establish ages at which children can be expected to meet adult religious obligations. The age of Bar Mitzvah for Jewish boys is 13. The age of other rites of passage, signifying movement from childhood to adult status, varies across primitive and civilized cultures. The closest approximation to a universal rite of passage in the United States may be the acquisition of a driver's license!

AGE CATEGORIZATIONS USED BY SEVERAL FEDERAL DATA AGENCIES

The lack of uniformity across states in age categorizations may be understandable in terms of the independence given to states under the federal constitution. The reasons, however, for differences in age categorizations among those federal agencies whose duty is to collect or analyze data are less clear. And, in addition, the age categorizations chosen by some of the agencies cause difficulties for many policy-analysts and program developers. The following paragraphs describe the age groupings used by three agencies for individuals under age 21.

National Center for Health Statistics

The National Center for Health Statistics issues periodic reports on vital statistics and on its many surveys. In its reports on births, maternal age is categorized as under 15 and by single years for 15 through 19, with a grouping of 15 to 19, and then by five year intervals, 20-24 and so forth. In its reports on deaths, age is categorized as under one, 1 to 4, 5 to 9, 10 to 14, 15 to 19, and 20 to 24 years. The National Hospital Discharge Survey uses the following age categories: under one year, 1 to 4, 5 to 14, 15 to 19, and 20 to 24. It also groups data by under 15 and 15 to 44, as well as under 17. The 1988 National Survey of Family Growth has reported its findings in relation to the age of the mother in several ways: 15 to 24, 15 to 19, and 20 to 24; and under 18, 18 and 19, and 20 to 24. The National Health Interview Survey in its annual publication, *Current Estimates,* reports a range of health-related problems in the categories: under 5, 5 through 17, and 18 through 24. It also groups data by under 18 and 18 through 44. The NCHS plans to interview adolescents aged 12 to 21 in a Youth Risk Behavior Surveillance supplement to its 1992 Health Interview Survey; and, starting in 1995, as a routine part of the Health Interview Survey. Note the lack of uniformity across reports, as well as the absence of an adolescent period in the Hospital Discharge Survey and the Health Interview Survey.

Bureau of the Census

Current Populations Reports, the publication of the Census Bureau's Current Population Survey, defines children in several ways. For example, the report on poverty in the United States, categorizes *family status* by whether the household contains related children under 18 or related children under 6. But in the section devoted to *age of individuals,* the categories are under 15 and 15 to 24.

Office of Technology Assessment

In its 1991 report entitled, *Adolescent Health,* the federal Office of Technology Assessment noted that definitions of adolescence vary and that a definition based on age alone is insufficient because of significant individual variation in the processes of adolescent development. Nevertheless, the OTA report focused on 10- through 18-year-olds. Its rationale was that by age 10, many individuals had begun puberty and that at 18 most are still in high school and dependent on their parents. OTA also divided the adolescent group into younger adolescents, 10 through 14, and older adolescents 15 through 18.

RECOMMENDATIONS

These descriptions lead to three recommendations. The first deals with uniformity. It would be helpful to policy analysts and program developers if there was uniformity in age categorization across at least the federal statistical agencies, primarily the Bureau of the Census and the National Center for Health Statistics, but also some of the other agencies that issue reports such as OTA, the Agency for Health Care Policy and Research, and the Centers for Disease Control and Prevention, the National Center for Educational Statistics, and the Substance Abuse and Mental Health Administration. Uniformity within the various subdivisions of these agencies is also urged.

The second recommendation deals with the reporting of health data by the National Center for Health Statistics. Those of us who study the health and social problems of adolescents and the programs directed at them have for many years requested that the NCHS routinely provide data on the adolescent years. While NCHS issues publications that deal with adolescents specifically and also makes available its data tapes from which it is relatively easy to conduct analyses by any age breakdown, some of its reports do not have data on the adolescent period. Including an adolescent period in all reports would make them more useful.

The final recommendation relates to the term, *teenager*, namely that this term should be avoided. In the review just completed, few fields or reports focused on "the teenager years," presumably from thirteen to nineteen. The media and advocacy organizations concerned with early pregnancy, gang behavior, and other forms of deviance use the term, *teenager*, instead of the term, *adolescent*, perhaps because it increases the number of youth who have exhibited some form of deviant behavior. If this is true, then its use is a "scare tactic." The federal government's agency in the area of early pregnancy refers to it services as the Adolescent Family Life Program and is concerned with women under the age of 19. The term, teenager, makes little sense biologically, psychologically, legally, or in almost any other way. It is a colloquialism that should have no place in scientific documents.

CONCLUSIONS

To return to the question posed by those who planned this panel, "What is a Child?", we have seen that the conceptual basis for the definition of a child varies depending on whether the individual doing the defining is a biologist, a psychologist, a lawyer, an educator, a member of the clergy, etc. We have also noted that the chronological age used to define child varies. The legal term, minor, is easier to define both chronologically and conceptually. It is set at 18 and differentiates sharply between those who are and are not considered able to make adult decisions. In most, but not all instances, a minor is under the age of 18, so we might say that a child is someone under the age of 18.

For statistical purposes, however, it would seem logical and even helpful to name sub-periods within childhood and to assign them chronological ages. The definitions of children used in several fields, and in particular those involving chronological age, suggest only one period about which there is total agreement and two others about which there is partial agreement. The one period whose name and definition is generally agreed upon is *infancy*. Children are infants from the time of birth until their first birthday. In addition, there seems to be a consensus that youth can assume many of the functions of adulthood on reaching their 18th birthday; and also that the sixth birthday represents some type of a turning point, perhaps because most children enter first grade between their sixth and seventh birthday. Thus, the following categorization could at least be considered: infancy: birth through one; early childhood: one through 5; late childhood: 6 through 11; early adolescence: 12 through 14; and late adolescence: 15 through 17. Other analysts might chose different ages, particularly for the conclusion of adolescence, but the ability to vote and be drafted, rather than the completion of high school or the teenage years, appears to signal the end of the adolescent period. Note, however, that although we usually restrict the word child and the childhood period to the time between the end of infancy and the beginning of adolescence; sometimes, for example in the title of this conference, "Families and Children," childhood is meant to extend from birth through the *end* of adolescence.

This review would seem to suggest that the question, "What is a child?" must be answered with two other questions, "Who is defining the term?" and "For what purposes does the term need to be defined?" Lest this audience feel that this entire discussion has been just an intellectual exercise, of no practical importance, think back to the recent presidential campaign. At least one of the reasons why Hillary Rodham Clinton was the target of so much negative publicity was her advocacy for giving children some of the rights usually reserved for adults. In a published article,

she had urged reversal of the "presumption of incompetency." Rather than assuming on the basis of chronological age that a child or adolescent was not competent, she had suggested that we presume individuals, even children, are competent until proven otherwise. A radical approach to defining childhood!

Mr. HORN. Without objection, the statement cited by the ranking minority will be included following her remarks. The gentleman from Pennsylvania, Mr. Fox.

Mr. FOX. Thank you, Mr. Chairman. I want to thank the chairman for his leadership on this subcommittee and in the legislation that he has annually shepherded to help support family and fortify families here in the United States.

I'm proud to have as one of our guests with me today the executive director of CADCOM of Montgomery County, PA, an agency dedicated to support of families in Pennsylvania, and he shares my enthusiasm with the foregoing information about you and what our committee will be doing.

Mr. Chairman, as you know, H.R. 11, the Family Reinforcement Act, is an essential objective to the Contract with America. This legislation strengthens the family and it has received bipartisan support by this Congress.

By way of clarification, I should add that, in the welfare legislation that I've seen, we have talked only about eliminating the Federal bureaucracy on the School Lunch Program and, thereby, will be able to feed more children with more meals.

Within the Family Reinforcement Act is Title IV, Section 401, which requires parental or guardian consent for minors to participate in any federally funded survey that includes eight kind of privacy-impact questions. This initiative stems from longstanding opposition to federally funded surveys designed to gain information on sensitive subjects.

While almost identical Federal regulations already exist, this provision reaffirms a commitment to privacy. Furthermore, the Family Privacy Protection provision is integral in producing a strong and viable piece of legislation that bolsters family ties.

Mr. Chairman, thank you for holding this hearing, for your leadership, and for allowing the participation of so many important witnesses, and we look forward to hearing them. Thank you, Mr. Chairman.

Mr. HORN. Thank you very much. Does the other gentleman from Pennsylvania have any comments? I'm conscious of Senator Grassley's time. He had a markup beginning at 10 o'clock, I believe.

Mr. GRASSLEY. That's been changed.

Mr. HORN. OK, fine.

Mr. MASCARA. I'll be brief, Mr. Chairman.

Mr. HORN. Thank you.

Mr. MASCARA. I want to thank you, Mr. Chairman. As a father of four and a grandfather, I'm always concerned about protecting the rights of parents to know about the activities in which their children are involved. This particularly applies to surveys which might ask them about their most personal behavior or their family life.

I believe parents should have the right to know and should be informed if their children are being questioned about drug use, sexual activities, mental or psychological problems, or their family's

income. If a minor child is engaged in any of these activities, the problems are better addressed in the confines of a loving family, rather than in an impersonal school or clinical setting.

On the other hand, as a former county commissioner, I'm also aware of the positive benefits that result from nationwide surveys conducted by the National Institute of Child Health and Human Development. They have provided us with a much better understanding of the causes and reasons why children turn to alcohol, drugs, or engage in teenage sex.

As a result of the data collected, schools and State and Federal agencies have been able to pinpoint major problems and develop classes to teach the dangers of this kind of inappropriate behavior.

While I am all for ensuring parents have the opportunity to decline the participation of their children in such surveys, I think we must be careful that the provisions contained in the Family Privacy Protection Provision do not go too far.

Dr. Johnston raises very valid concerns in his testimony about the problems that could arise from requiring that parents actually give their written consent for participation in surveys. I believe his compromise provision of sending out first-class letters should be carefully considered.

At a more important level, we must not interfere with the ability of law enforcement officials to question children who are being abused, or block needed clinical treatment. Children must be protected, but not to a degree that potentially endangers them. If it is the result of the Family Privacy Protection Act, we would be defeating our purpose.

In this regard, I was pleased to note, Mr. Chairman, that you indicated in your memo that the provision should be limited to surveys and related questionnaires, but we still must be careful in how we draft this language.

I look forward to the hearing here today and talking to the witnesses. Thank you very much, Mr. Chairman.

Mr. HORN. I thank the gentleman and now ask if the gentleman from Florida, Mr. Scarborough, has any opening comment.

Mr. SCARBOROUGH. Thank you, Mr. Chairman. I just simply want to say it's an honor to be here today to hear the testimony at the hearing that you're conducting. I certainly am, like you and other Members of this Congress, interested in broadening of parental rights.

I've been concerned with current trends that have been occurring in the past few years and, again, look forward to hearing remarks from the Senator and the others that are going to be testifying today on this important legislation. Thank you.

Mr. HORN. Thank you. Without objection, the statement of the gentleman from New Hampshire, Mr. Bass, will be put in the record.

[The prepared statement of Hon. Charles F. Bass follows:]

PREPARED STATEMENT OF HON. CHARLES F. BASS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, I would like to take this opportunity to thank our witnesses who have agreed to testify this morning. I especially thank you, Senator Grassley, for taking time out from your Senate duties to help us understand the importance of this particular provision.

There is a widespread perception that the Federal government has become overly intrusive, especially when it comes to families. The intent of the legislation before us is to better balance the rights of families against the power of government. I hope that it will do just that, and am very interested in listening to this testimony, as well to as any suggestions our witnesses may have for improving this provision.

I thank the Chairman.

Mr. HORN. I am now delighted to welcome the Senator from Iowa, Senator Grassley, who has had a rich and lengthy experience in this area of the law. We know you're on a tight schedule today, so please proceed in any manner you would like.

STATEMENT OF HON. CHARLES E. GRASSLEY, A SENATOR IN CONGRESS FROM THE STATE OF IOWA

Mr. GRASSLEY. Thank you, Mr. Chairman. Most importantly, thank you for looking into this very important area of existing law, or lack of attention in the past, and how it relates to the privacy of individuals. And so I compliment you on your leadership. Most importantly, though, I appreciate the opportunity to come before your committee to discuss an issue of great importance to me and to our Nation's families.

Last year, I sponsored an amendment to Goals 2000, which gave greater privacy protection to the family. The amendment passed the Senate 93 to 0 and then became part of the final law. I'm pleased that you're considering an expansion of that language in your bill.

Title IV of your bill expands the protection of the Pupil Rights Amendment from solely the Department of Education to any federally funded department or agency. My opinion is that this expansion is needed and welcome.

I wouldn't want to detract from that statement by some cautions that maybe have been expressed here to specific programs but, as a general proposition, I think it's a very, very good move to make, to make sure that privacy isn't protected just in the Education Department but also in other agencies.

I wanted to review for the committee some of the issues raised during our discussion last year, which I hope will be helpful to you in your deliberations. The language in Section 4, covering any survey, analysis, or evaluation was deliberately chosen by me for its broad, sweeping effect. The provision covers any form of getting information from a minor, whether written or oral.

The 1978 original language, which my amendment deleted, related to psychiatric or psychological testing, examination, or test, or treatment. This 1978 language was dropped because no one understood what it meant.

A parent, teacher, or administrator had to get, before my amendment became law, an expert to decide if a written or oral exam fit a bureaucratic definition of "psychiatric" or "psychological." My change provided broad and very sweeping coverage of any question of a minor.

The second change my amendment made was to drop a requirement that the survey have a "primary purpose" of revealing private information. Now, it may not appear on the surface, but this is an impossible standard to meet.

If there was a test with 100 questions, for example, and No. 72 covered one of the private areas, a parent had to show that Ques-

tion 72 was the primary purpose of the test. Now, simply speaking, how was a parent to show that? It was, in fact, an impossible standard.

So my amendment simply said that if the survey, analysis, or evaluation revealed the private information, that was enough to require parental consent. Note that it does not exclude tests just because they're anonymous. Even in cases where there is no record of the child, the parents' consent is required if the other criteria are met.

Now, that gets us to another big issue of discussion. I specifically required written parental consent. It is not enough to get implied consent. Implied consent would work like this: a note is sent home to a parent saying something like, "If you don't respond in writing by a specific date, your child will be given this survey."

Well, what if, for instance, the parents are out of town or for some other reason do not receive the notice before a given deadline? They are not protected. The only way to guarantee that parents know what is going on is to require their specific written consent before the survey is given.

Another issue that is implicitly covered is whether the child can make that decision. I address this issue much like the courts have addressed statutory rape or the prayer decisions.

Under statutory rape laws, we have made a decision as a society that a child cannot give intelligent, knowing consent to engage in adult behavior.

The prayer decisions touch another point. They declare that, because school is a compulsory atmosphere, a child should not be required to engage in an activity which may compromise his personal or family convictions.

I believe both of these examples shed light on surveys or other questionnaires given to children. The language says a minor shall not be required to submit to a survey. This language is based on both of these previous examples.

We should not place a child in a compulsory atmosphere in the position of having to determine what is private information and if he should reveal it. These are adult decisions to make. That is why the choice in this language is specifically and deliberately placed in the hands of the parents.

Thus, the final result of the language is that if a survey, analysis, or evaluation reveals private information in a federally funded program, the parents must give specific written consent. Without that specific consent, their child cannot participate.

I am pleased that the committee has decided to make this language apply in all federally funded programs. Many of the offensive surveys come out of the Departments of Health and Human Services, Justice, or the Centers for Disease Control. However, by covering all agencies, your committee will guarantee family private protection.

I am currently working on a final step that would eliminate any future need to address this issue piecemeal. I will soon introduce a bill to restore the historic decisionmaking authority of the family. My proposal will declare that the rights of parents to direct their children is a fundamental right under the 14th amendment. Thus, a government agency cannot interfere in this relationship unless it

can demonstrate that there is a compelling government interest to protect.

This change will send a clear message to the courts that the parent/child relationship is primary and must be protected, as we have supposed it's been protected by the Constitution since the beginning of time. I look forward to working with many of you on that proposal.

For now, however, I want to congratulate you once again on your approach in H.R. 11. There may be some things, and I can't spell them out, but that's the work of your committee, and maybe even the author will consider some modification. But, for the most part, it's a principle that we ought to apply more broadly than just in the Education Department.

I do have a little bit of time, if you want to ask any questions. You don't have to, to humor me, but if you want to, I'll be glad to try to respond.

Mr. HORN. Thank you, Senator. Let me mention a strange situation which sometimes affects the child. We had a proposal last year in the House that school children should be carrying home questionnaires asking their parents if they were illegal aliens. I'm sure the motive was noble, such as to try to control the situation we have, especially in California.

This would be a government-sponsored questionnaire. There was no "privacy" for the child and, of course, one could say it was a little silly to think someone would admit they're an illegal alien.

I was curious. The child is the messenger there and can see the document going and coming. I don't know if, in the second grade, they can fully understand what the question is. How do you feel about a situation like that?

Mr. GRASSLEY. I think the extent to which it involves the parent in making the final decision, I think, answers the concerns that I have. Whether or not the school invades privacy even under my bill, if the parent decided to answer that question, they would be within the law.

I suppose it raises a whole other issue that I haven't thought about, which is directly related to the referendum that was in California last year—the extent to which schools should take the place of the INS in making some of these determinations.

I guess I come from a little broader approach than just your bill; but I feel that the illegal alien problem is such a major concern in America, and the thumbing of the nose at the law and the lack of respect for the law and what that means for us maintaining our position as an independent Nation, which very independence implies the control of our borders, that we are going to have to look for some extraordinary ways of getting at that and solving that problem.

Mr. HORN. The Representative from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman. First of all, I'd like to take this opportunity to congratulate you, Senator Grassley, on your oversight effort, saving taxpayers' dollars, that was noted in "Newsweek," with the abuses of the Air Force in flying generals and their cats across the country.

Mr. GRASSLEY. Thank you.

Mrs. MALONEY. That was very laudable, your work in that area.

In your education bill, how did you define a child?

Mr. GRASSLEY. A child—somebody under 18 years of age or an emancipated minor.

Mrs. MALONEY. When you were talking about requiring written documentation from the parents, wouldn't that put another paper burden on the parents? Would it not suffice if they could call the school or call the agency and say, "You can discuss this with my child?" Does it have to be in writing?

Mr. GRASSLEY. I believe it must be in writing. I do appreciate that. On the other hand, I believe that maybe the triggering in of this sort of, at least as far as education is concerned, is fairly—not too often in a particular school year that it would be a burden.

I think it's so important that we don't let the situation be looked at by school authorities as a sort of nonchalant process. We have problems because it has been.

If you go back to the 1978 law, through the 1980's, so many attempts to get your rights exercised under the 1978 law by the Department of Education, if you were a parent, and each one of these hoops that you had to go through—like was it a psychiatric test, was the question really revealing personal information, all these hoops you had to go through—there were only less than 2 dozen cases where a parent was ever able to exercise this right.

So I guess we felt that, if we were going to get it through there, and get through all these hoops, we didn't want the one last step of did the parent really give an OK or not to be questioned; the written consent, albeit it some paper, is a necessary step to make it certain that the other rights are protected.

Mrs. MALONEY. Thank you, Senator. I have no other questions. Thank you for your testimony.

Mr. HORN. The gentleman from Pennsylvania.

Mr. MASCARA. Thank you, Mr. Chairman.

Mr. HORN. You and I can split up the next 3 or 4 minutes.

Mr. MASCARA. I'll just take a moment. Thanks, Senator, for coming over and sharing with us your vast knowledge in this field.

My concern is that this bill might cause some problems as it relates to identifying problems related with sexual abuse, incest. What safeguards do we have to make sure that this is not going to cause a problem in this area?

Mr. GRASSLEY. I'm not a lawyer, but it would seem to me that the compelling interest—in my State, for instance, where a school nurse or maybe an administrator, maybe even a counselor—there's more of a personal relationship, confidential relationship, maybe with a counselor—I think that compelling interest, to get—if it's obvious child abuse, the reporting requirements would override this without any question whatsoever, because you're talking about a criminal activity.

If it were a question, though, that you were trying to get information about child abuse through a questionnaire, then I presume that it would be and should be protected. But where that's a suspicion of it, obviously they aren't going to use a questionnaire that's financed by Federal funds to get at that. They're going to go right to the source, and they have an obligation to do that, as far as I'm concerned, and nothing in my law would, or my legislation, would stand in the way.

I assume that, if the chairman's legislation passes, that it's not his intent that anything would stand in the way of the compelling interest of a State. First of all, you're talking about things financed by Federal funds. The extent to which this concern of the teacher or the counselor or principal that there's been child abuse, at least in my State, none of that money would be financed by Federal dollars and it wouldn't involve a survey, anyway.

Mr. MASCARA. The point is made that the school could be receiving financial assistance and then that would prohibit the participation.

Mr. GRASSLEY. The Federal dollars must be used for testing, not just that they receive Federal dollars. That does not trigger in my law. The Federal dollars must be related to a survey.

Mr. MASCARA. My last question is, I'm not aware of any Federal surveys. Could you indicate?

Mr. GRASSLEY. Yes. I had 11—no, I think we had 21 States. Let me back up. I've made one mistake already. And then I'll answer your last question.

I was wrong. It is a federally funded program. That could trigger this in, yes.

Now, to answer your question, you said you aren't aware of any federally funded survey. We had at least—I tried to get instances from every State. I only got 21 responses.

We had 21 examples from 21 different States that I used in my floor debate on this subject, where there were Federal funds involved in a survey where parents tried to interact to get their point of view through and not to have the process go through for that parent.

Then that's how all these problems of showing that it was a federally funded as opposed to a local funded program, and then was it a psychiatric test, and then was it getting personal information, and all these hoops they had to go through, they just couldn't get through them.

Mr. MASCARA. Thanks, Senator.

Mr. HORN. One last question, Senator. I recall when I was in the third grade, Hitler was rising to power in Europe and Germany. Nazi Germany's antics and despicable acts were in headlines every day. The teacher in the third grade decided on, I'm sure, a very innocent question, to go around the room and ask each child where did their parents come from.

Well, I happen to have an immigrant father who came as a legal immigrant from Germany in 1903, and I knew the answer of "Germany" wouldn't exactly sit well on the playground, given all the headlines Hitler was getting. I had collected stamps, so I answered Bavaria, which was true—a province of Germany.

Now, to what extent does that kind of asking the child the country from which they came—ordinarily, it wouldn't matter. When you're in a highly emotional period in this country, and it does matter. So I'm curious if you have any reaction to that question.

Mr. GRASSLEY. I'm afraid any law we put on the books—as we found out, the first amendment was a problem for Jehovah's Witnesses during World War II, as well.

Mr. HORN. I remember that one, in my class.

Mr. GRASSLEY. We're not going to be able to write a perfect piece of legislation. But, for the most part, I think the innocence of the question would be the core issue, the extent to which there was a question asked that would lead to an interruption of the constitutional rights and privacy of that student and whether that's the goal or not, or the purpose or not. If that's the outcome, it seems to me it would violate at least the spirit of your law.

Mr. HORN. Thank you for coming over, and we hope you're not too late to the markup and we're not too late to a vote.

Mr. GRASSLEY. Thank you.

Mr. HORN. The committee will be in recess for 15 minutes.

[Recess.]

Mr. HORN. The hearing will resume. If the next two witnesses, Dr. Johnston and Dr. Hilton, will stand and raise their right hand.

[Witnesses sworn.]

Mr. HORN. Both witnesses affirmed. We'll start with Dr. Lloyd Johnston, who is the program director, Survey Research Center, University of Michigan, one of America's most distinguished and first major survey centers, after the Second World War.

STATEMENTS OF LLOYD D. JOHNSTON, PH.D., PROGRAM DIRECTOR, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN; AND MATTHEW HILTON, J.D., PH.D., A MEMBER OF THE UTAH BAR AND AN AUTHORITY ON FAMILY PRIVACY ISSUES

Mr. JOHNSTON. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify before the committee. I think that this is an important issue to those of us in the field of research and drug abuse, and I've talked to quite a few of the people who direct the largest studies who aren't here, so I think I reflect the thinking of quite a number of people.

Senator Grassley pointed out, in answer to your question at the end of his testimony, that there may sometimes be countervailing values that have to be balanced in any decision, and he was talking about the problem of illegal immigration and weighing that against protection of the parent privacy rights and so forth, and I think that that's the crux of the problem here.

I have submitted written testimony, which goes beyond what I could cover in 5 minutes, and I would like to ask that it be put in the record.

Mr. HORN. That will be put in the record.

Mr. JOHNSTON. Thank you.

Mr. HORN. I will say that for all witnesses, that it automatically goes in the record, and we know it's short to limit you to 5 minutes but, if you could, summarize, and then we'll get into questions.

Mr. JOHNSTON. Yes. I will just give you a thumbnail sketch of what I think are the key points. I think no one would disagree that there are serious problems among America's young people today and, as some have pointed out, those problems are a lot more severe than they were 20 or 30 or 40 years ago when others of us grew up.

There are problems of violence, of delinquency, victimization, alcohol abuse, drug abuse, preparedness for the workforce, dropping out of school, and so forth. These are problems for which I think

school surveys have provided a unique window of understanding and measurement and insight for our society, and that's why I think that an amendment such as this is quite problematic if it has significant adverse impact on this body of research, and I think that it would.

In general, school research has been important, but I think the evidence is accumulating that it may be even more important than we realized, because we're finding that the alternatives, such as by-phone surveys, are not appropriate for a number of sensitive kinds of problems that I just spoke of, and that household surveys are extremely expensive—$300 or $400 per case—which means you have to have much smaller samples, for one thing and; furthermore, the validity of what's gathered from youngsters in the household situation is often not very good, for obvious reasons. They're concerned that their parents, one way or another, will find out what they're saying.

The large samples that we're able to get very cost-effectively in school surveys allow us to do a number of things. One is to get valid measurement and understanding of these problems. Another is to get large samples that have more accuracy in estimating both the levels and the trends in important problems in society—we have certainly been doing that over the last 20 years in our own study—and they allow us to get a sufficient number of cases in some important small groups to be able to characterize and study those groups.

For example, daily marijuana users—we get enough of those to be able to talk about what they're like and what motivates them and what they see as the consequences of their behavior, and so forth. This would not be possible, without large-scale school surveys like our own.

Our own study, which I allude to in my testimony, is one that would be affected, and it deals not only with these problems but also provides some of the measures of the national educational goals and the national health goals for the year 2000.

There are other major studies like this—CDC's youth risk behavior system, which deals with measuring health threatening behaviors and health protecting behaviors—exercise, diet, drunkenness, drunk driving, seat belt use, accidents and injury, tobacco, alcohol, and drug use, and so forth.

There are a number of studies which are done at the community level, at the behest of the local school system, but funded with passthrough moneys that are Federal in source. They would also be affected, and some of those are extremely large in numbers of cases.

The Pride surveys, for example, survey somewhere between 300,000 and 1 million students a year in various systems, and I think they would be probably disabled because of the difference in cost, and what's proposed here would double or triple what it costs to do them, or worse.

Then there are other departments that have various studies—Labor, Justice, Defense, and so forth—that are important. There is an important body of work here, and I think probably with a little discussion, most of us would agree that it is.

I think this proposed legislation, as currently worded, constitutes a threat to this entire corpus of important work. The viability of the work could be undermined by driving the non-response rates so high that the samples are really useless for interpretation, and/or driving the survey costs so high that we couldn't have large samples and the Federal Government would get a lot less product for its investment in research.

Now, the problem as I see it is not one of gaining parental consent. It seems to me that's the objective of this, of Title IV, and I think that objective can be attained virtually completely with a different mechanism. It's the mechanism which is the problem—the one of active written consent by every parent whose child will participate.

Many, many parents simply do not answer their mail. It's not that they object to their child's participation. It's just that they don't answer their mail. We do an active consent procedure on a particular sample of our study population and we know that 55 percent of the parents don't answer the first mail request for their consent. If you have a 45 percent response rate in a survey, it's useless.

Then, we have to undertake an expensive procedure to follow them up. In this case, we are able to do it ourselves and do it by phone, and eventually we get very high cooperation rates with between 1 and 2 percent saying no, they don't want their child to participate.

That's what we're dealing with is, in order to give that 1 or 2 percent of the people a chance to say no, we threaten to undermine the entire study and the 98 percent of the parents who are perfectly glad to have their children participate.

I mentioned the sharp increase in cost. There's also more burden on schools, because they're not allowed to give out the names, addresses, or phone numbers of parents, so we can't do the followup in general. They have to do it and, of course, they'll do it with differential quality.

Further, many parents have to be bothered by this process—in essence, pestered to answer, to return those parental consent forms, and to give us some answer. Now, that seems to me contrary to another value that we all seek. And districts, I think, would be prevented from doing surveys that they think are important on their own populations of students due to the costs and the staff requirements.

I laid out in my written testimony three different models for accomplishing the objective that we're talking about here and tried to evaluate each one: The first is H.R. 11 itself, as currently worded. The second would be a variation where you could use telephone answers from parents who don't respond in writing, which ameliorates some of the problems but still has a considerable number and a considerable cost.

Finally, the first class mail advance notification of all parents—this is new; this is not currently in Federal legislation—providing them an easy opportunity to decline either by phone or by mail or both, with low embarrassment—basically, a very easy thing. You could call it active dissent, if you want, instead of active consent.

As I say, in the end, for the vast majority of legitimate studies, the decline rate will be in the 1 or 2 percent range.

I try to make the case in my testimony that just about all of the various parties who have an interest in this gain, and it's very seldom that we get that kind of a convergence of interests, as you well know in the Congress. So I think there's a lot to be said for it and I hope that you'll give it some serious consideration.

I think it would accomplish the purposes. It would be new legislation, it could still have the same title, and wouldn't have all these very serious side effects that I assume are unintended.

[The prepared statement of Mr. Johnston follows:]

PREPARED STATEMENT OF LLOYD D. JOHNSTON, PH.D., PROGRAM DIRECTOR, SURVEY RESEARCH CENTER, UNIVERSITY OF MICHIGAN

Mr. Chairman, I appreciate the opportunity to testify before your Subcommittee regarding on H.R. 11, Title IV. In my letter on this subject of February 27, 1995, sent to all members of the full committee, I tried to lay out the problems which I believe Title IV, as currently worded, would create for present and future studies which are of significance for understanding a great many of the problems among our young people. Rather than repeating what was in that letter, I would like to request that the attached copy be included in the record with my written testimony.

Let me begin by briefly stating my experience and qualifications of relevance to these hearings. I am a social psychologist by training and a Research Scientist and Program Director at the University of Michigan's Survey Research Center. Over the past twenty-five years I have studied primarily adolescents and young adults by means of representative national surveys. The current ongoing survey series, Monitoring the Future, of which I am principal investigator, is entering its twenty-first year. It encompasses young Americans in secondary schools from grades eight through twelve, as well as young adults from ages 19 to 35.

Under the past six administrations this twenty-year study has served many purposes and has been called upon for insight into the problems and behavior of American young people on many occasions, both by the Congress and the White House. I believe it is fair to say that it has become this country's most reliable and influential source of information about drug use among American young people. It also serves a number of other purposes of national consequence. For example, it provides annual information on progress toward some of the National Health Goals for the Year 2000 and the National Education Goals for the Year 2000.

The viability of this study, which by its very nature is ongoing and dealing with a set of ongoing problems among our young people, as well as the viability of a number of other studies like it, will be threatened by the enactment of Title IV of H.R. 11, as currently worded. *The core of the problem in the legislation lies not in its providing parents a chance to decline their children's participation in survey studies, but rather in the particular mechanism chosen to accomplish this goal—that is, in requiring written parental consent.* Since I assume the Subcommittee might consider alternative mechanisms for advising parents well in advance of the occasion about the nature of the research undertaking, as well as providing them an opportunity to decline their child's or adolescent's participation, allow me to address what I see as the strengths and weaknesses of the most obvious alternatives. I will start with the mechanism contained in the legislation. (In all of these deliberations, the scale of the effort needs to be kept in mind. Our annual samples involve about 50,000 students in 425 schools. The PRIDE surveys involve 300,0000 or more students per year, the CDC Youth Risk Behavior Study about 16,000 per year, and so on.)

ALTERNATIVE I. WRITTEN PARENTAL CONSENT REQUIREMENT (H.R. 11, TITLE IV)

As currently worded, Title IV requires that the school and/or research investigator have in hand a signed parental consent form before a student may be included in a survey.

Strengths: (1) Advance parental notification and the opportunity to decline is guaranteed for all students chosen for each survey.

Weaknesses: (1) The representativeness of the national samples will be dramatically poorer than in the past, because many parents fail to respond in writing even though they have no objection to their children's participation.

(2) Schools, not the researchers, will be required to expend considerable staff time contacting parents by mail or phone to encourage parental response, since

most schools are precluded from giving information about parents, their addresses, or phone numbers to outside people.

(3) The research projects, and therefore the government sponsors of them, will be expected to pay for this follow-up effort, substantially raising the cost of research.

(4) Many schools will decline participation in the study because of the added burden of follow-ups, further damaging representativeness.

(5) Even with an extensive follow-up of non-responding parents, response rates will be poor and the resulting samples biased because children from high risk families are more likely to have non-responding parents, and, therefore more likely to be omitted from the sample. For example, in one inner city school in which we conducted a survey requiring signed parental consent, only 17 out of 100 parents returned the form, resulting in a 17% response rate.

(6) A number of parents will have to be contacted repeatedly in order to get a response from them, which will be seen by many of them as an intrusion.

Net result: Less representative, poorer-quality research at considerably higher cost, with overburdened schools shouldering more burden than before, and parents being bothered more. A number of studies may simply yield unusable results.

ALTERNATIVE II. TELEPHONE CONSENT REQUIREMENT

One obvious variation on Alternative I is to secure non-responding parents' consent by phone. (Again this will have to be done by the schools, since they are prohibited from providing home addresses, phone numbers, etc. to outsiders, even for use in tracking non-respondents.)

Strengths: (1) Advance parental notification and the opportunity to decline is guaranteed.

(2) This should reduce the non-representativeness of the samples from what it would be under Alternative I, by increasing parental response rates.

Weaknesses: (1) Schools are still burdened with the task of contacting parents.

(2) Parents are still bothered, though less so than in Alternative I.

(3) Costs are still quite significant for the new follow-up procedure since multiple calls often are needed to reach parents.

(4) Calling parents for follow-up must extend beyond school hours, since many parents work, making effective accomplishment of the task by school personnel difficult, and again, more costly because of overtime, etc.

(5) Many schools will decline to participate in surveys because of the added burden of follow-up and because of the need to bother parents who fail to respond by mail.

Net Result: Representativeness of samples obtained will be better than under Alternative I, but poorer than at present, because more schools will decline to participate in survey studies and because not all parents will be reached in the phone follow-up conducted by school personnel.

(Also, schools will vary in how good a job they do in conducting the follow-ups, perhaps resulting in other biases in the sample. For example, big city schools often have the least resources available to help out with research activities, which means they are likely to have lower participation rates.) Parents will have to be bothered, though not as much as in Alternative I, because they can give their consent by phone. Finally, Federally conducted or sponsored research will be distinctly more expensive to conduct than at present because of the additional costs for parental follow-ups.

ALTERNATIVE III. ADVANCE PARENTAL NOTIFICATION BY FIRST-CLASS MAIL, WITH THE OPPORTUNITY TO DECLINE BY MAIL AND/OR PHONE

Another logical variation for accomplishing the main objective of H.R. 11, Title IV is to require that a first-class letter be sent to the parents or guardians of each student chosen for a survey, (a) describing the time, place, and nature of the forthcoming survey and (b) providing a low-effort method for the parent to exclude his or her child from participation in the survey. This method is now used in a number of studies, including the Monitoring the Future Study, but is not used routinely in all Federally funded or Federally conducted survey studies. H.R. 11, Title IV could be revised to mandate this procedure, accomplishing the same goals as Alternative I without most of the serious side effects.

A few more words about the specifics of this alternative: The letter to parents would usually come in the form of a letter from the school principal, since the schools cannot reveal parent names and addresses to outsiders. A "recommended letter" could be provided to principals by the researcher to save them time and to

assure that the letter provides adequate information about the study. (An alternative is to have a letter from the researcher with a cover letter by the principal.)

An opportunity for the parents to decline their child's participation can be provided with (a) an enclosed, self-addressed, stamped (return- or postage prepaid) postcard to be mailed back to the school or the principal's designee in the event that the parent does not want the student to participate, (b) a phone number at the school (usually of the principal's secretary) to be called by the parent(s) to indicate that their son or daughter will not participate, (c) a toll-free number provided by the research team, or (d) some combination of a, b, and/or c.

Strengths: (1) Advance parental notification and an opportunity for parents to decline is guaranteed for all students chosen in each survey.

(2) This should reduce the non-representativeness of the obtained sample considerably from Alternatives I and II, because more schools will be willing to participate and many fewer children will be lost from the survey simply because their parents failed to respond to the parental consent letter.

(3) Those few parents who really wish their child(ren) to be omitted from any given survey (usually no more than 1% to 4%, depending on the survey) have adequate opportunity to do so at no cost and very little effort.

(4) Parents are not bothered by prompting calls and letters aimed at getting a response.

Weaknesses: (1) For studies which do not currently use these procedures, there will be a very modest increase in cost for postage and a small amount of school staff time, but the staff time requirements and the costs are far less than under Alternatives I and II perhaps by a ratio of 15 to 1, according to a recent journal article on the subject. A number of surveys, including our own national surveys of eighth and tenth grade students, already use these procedures and, therefore, would not incur this increase in costs. (They seem to work very well. We have used them in our eighth and tenth grade samples each year since 1991, surveying some 140,000 students, without problem or complaint.)

Net result: The quality of Federally-funded research will not suffer a serious decrement under Alternative III, and the costs of such research will rise only very modestly. Schools will not be unduly burdened, and parents will not be bothered by any unwanted follow-up calls or letters.

As you can see, I believe that the interests of nearly all parties involved are maximized under Alternative III: Parents, schools, the Federal government (the ultimate consumer of the research), the researchers (who must try to provide a meaningful interpretation of the survey results), and the general public (who ultimately pay for the research, and who stand to benefit from the answers it provides or harmed if it provides inaccurate answers). It is not often that such a convergence of optimal outcomes can be found, and I would urge the Subcommittee to seize the opportunity by modifying Title IV of H.R. 11 to adopt the Alternative III mechanism for assuring a parental role in their children's participation in research.

Historically, of course, we have largely operated on a model in which schools were given broad authority to act *in loco parentis*, but that model is giving way gradually to one of greater direct parental decision-making. While I think in general the former model has served the country well, there certainly have been exceptions; and, in any case, a number of parents have asked for more authority in the process. This is not unreasonable, and I think that we probably should be moving in that direction. I simply urge that burdensome new government regulations not be added if they are not needed to accomplish the underlying objective, and particularly, if they unnecessarily increase the research costs, the burden on schools, and the burden on parents, *and* also reduce the quality of the product the public is buying—in this case, the quality of our scientific research on American young people and their problems.

ISR,
Ann Arbor, MI, February 27, 1995.

Hon. STEPHEN HORN,
House of Representatives,
Committee on Government Reform and Oversight,
Room 129 CHOB,
Washington, DC.

DEAR CONGRESSMAN HORN: I am writing regarding *H.R. 11, Title 4, Family Privacy Protection Act.* If enacted as now drafted, it will lead to some serious, and I assume, unintended problems for the successful conduct of a substantial number of vital research activities that are underway in this country.

Studies adversely affected

One of those, which I believe would be adversely affected in the extreme, would be the Monitoring the Future Study, of which I am the Principal Investigator. This study, now in its twenty-first year, has been conducted at the University of Michigan under a series of research grants from the National Institute on Drug Abuse. It has been used extensively by, and proven quite satisfactory to, the White House under the past six presidential administrations. I think it is fair to say that it provides the most widely-used and reliable measures of drug use, drinking, and smoking by America's young people. It also provides key measures on progress toward a National Education Goal for the Year 2000 and Health Goals for the Year 2000, as well as some of the best measures of trends in delinquency and victimization among adolescents and young adults. Representative samples of some 50,000 students in eighth, tenth, and twelfth grades (located in over 400 public and private secondary schools) are surveyed annually. This is a very cost-effective, independent survey operation which has proven highly useful to instruct policy at all levels of government, but particularly at the federal level. It has provided accurate information for twenty years on the nature and extent of drug use among the nation's students, and more importantly, on changes taking place among them. It also provides significant findings on the causes of those changes. For example, in the last three years this study has called attention to an upturn in drug use, specifically marijuana use, and particularly among the younger students. It has also shown that declines in the perceived dangers of marijuana use, as well as changes in peer norms, explain most of this change in use. This knowledge is now being used to help guide both public and private sector responses to this re-emerging problem among our youth.

Monitoring the Future is but one of the studies which may be adversely affected by H.R. 11, Title 4. Many states and communities conduct assessments of alcohol and other drug use among their children, using federal pass-through monies, including the PRIDE surveys, the American Alcohol and Other Drug School Survey, the Michigan Alcohol and Other Drug School Survey, etc. CDC's ongoing Youth Risk Behavior Survey, which evaluates the prevalence and trends for a number of health threatening behaviors, would also be affected by this legislation. In addition to these ongoing studies, many basic research studies important to this country's understanding of its young people and their problems, and carried out on a one-time basis, also would be affected.

The problem being addressed by Title 4

The act does not discuss the problems ostensibly being solved by the legislation, so one must deduce the intent from the nature of the act. Assuming that there is no intent simply to kill much-needed research, one can deduce that the intent is to provide parents with advance notification and description of the nature of survey studies in which their children are being invited to participate, and to provide a comfortable way for them to decline their children's participation if they have objections to the nature of the research. Except for studies dealing with sexual behavior, which few in-school surveys do, extremely few parents actually object to their children participating in legitimate, established research surveys—on the order of only one to four percent. Nevertheless, it is widely acknowledged that it is important for parents to have the opportunity to decline their children's and adolescents' participation, and to do so with a minimum of effort and an absence of embarrassment.

Current safeguards

I think it can be argued that presently there are more than adequate safeguards in place to accomplish these goals within the context of school-based research, and to protect children from risk or undue influence. In particular: (a) federal agencies have explicit regulations, (b) research institutions have institutional review boards (IRB's) which screen all proposals before admission for adequate protection of human subjects, (c) funding agencies have research review committees which must pass on the adequacy of human subjects protection in each and every research protocol, and (d) most school systems also have a research review committee which evaluates the appropriateness and protections of each piece of research carried out in their school system. All of these screening points require parental notification well in advance of the survey and a convenient means by which a parent can direct the school to exclude their son or daughter from a particular survey. Usually, the procedure for declining is for the parent to call the school's administrative office. It is a system that works well. I know of no case in which the confidentiality of a child has been breached, or where a parent declined their child's participation, but the child received the survey anyway—and certainly none among the hundreds of thousands of American adolescents who have participated in the Monitoring the Future

Study. Those few parents who have indicated that they did not want their children involved have always had their wishes honored without argument, and in a manner preventing embarrassment for either the parent or the child. Further, if a student indicates that he or she does not wish to participate—even though the parent did not object—that wish is also always honored, and no attempt is made to pressure them otherwise.

School involvement in the procedures

Because schools are prohibited from supplying the names and addresses of parents or students to outsiders, the mailing of the notification/consent letters to the home must be done by the school. For the same reason, any follow-up which might be required to increase the response rate from the parents must also be conducted by school staff, not the outside researchers. The importance of this fact will become apparent in the next section.

The less-than-obvious problem with H.R. 11

Currently, the standard procedure for parental notification of, and parental approval for their child's participation in a federally-funded or federally-conducted survey, has been by first-class letter stating the date and nature of the forthcoming school survey. The letter from the school principal is sent to the parents' home address and provides simple instructions for those parents who want their children exempted from the survey. This usually is accomplished by the parent making a local phone call to the school administrative office, and when such a call is made, the parents' wishes are recorded and procedures are activated to exempt the student.

The procedures required in H.R. 11 do not seem so different at first glance, but there is one critical difference. It requires that a signed, parental consent form be provided to the school or researcher for the student to participate. In other words, the default is that the student *cannot* participate unless parental approval is provided *in writing*. This may seem reasonable enough, until you realize that in essence two surveys are now being carried out instead of one—a survey of parents and a subsequent one of their children—and that the "non-response" rate for the study will be the sum of the non-response rates for the two surveys. Unfortunately, parents these days are busy people, who on average are not very good at responding to this sort of mail. Even the inclusion of a postage-paid return postcard yields initial responses from less than half of the parents under the procedures proposed under H.R. 11. If no further action is taken, that 50% non-response rate to the study would mean that the data are worthless for characterizing American young people. Under the proposed procedures it is then necessary to badger the parents to return their signed response form with an explicit answer in order to even approach a scientifically useful response rate on the survey. Because schools cannot release parent's names, addresses, or telephone numbers to researchers, they must assume this added burden, often requiring up to four contacts, and bothering a great many parents in the process. In our own experience few parents withhold this consent.* Rather, many simply forget to sign and return a card giving their approval. To make matters worse, these are not a random set of parents; minorities, those with lower education, and those with problems like substance abuse, are less likely to respond. Therefore the higher the non-response rate, the more *non*-representative is the sample actually attained. Many of the children at highest risk of problem behaviors like drug use, delinquency, dropping out of school, etc. are systematically omitted from the sample.

Summary and conclusion

To summarize, Title 4 of H.R. 11, while presumably well-intentioned, is solving a problem that does not exist and ironically, doing it with the unintended consequences of reducing the quality and usefulness of federally sponsored research, making that research considerably more costly to carry out, increasing the level of intrusion into the lives of parents whose rights it is intended to protect, and adding to the burdens of already overburdened schools. Requiring parental advance notification and explanation of the research, as well as a comfortable and easy method for parents to decline their children's participation, is desirable. Requiring an explicit signature from every parent before the student can participate in any survey puts an unrealistic and unnecessary burden on researchers, schools, and parents. And, ironically, it does so by adding government regulations to an already elaborate network of regulations which accomplish the same general goal.

To avoid inadvertently "killing off" a number of important research programs which have been helping us to understand our children and their problems, I hope that the supporters of H.R. 11 will consider some major revisions to Title 4 along

the lines suggested here. Please do not hesitate to contact me if additional information or suggestions are needed.

Sincerely,

LLOYD D. JOHNSTON, PH.D.
Program Director and Research Scientist.

*We know this from follow-up studies of adolescents who have provided us with home addresses. Before mailing them a survey at home we first contact the parents for written permission. Less than half respond initially. We then follow-up by phone, and permit them to give permission by phone—permission which is carefully recorded in each case. Very few of those parents who are successfully reached actually decline (4%-5%). Most simply did not remember to respond by mail.

Mr. HORN. Thank you. We'll get back to that in the question period. We'll also put in the record, at this point, besides your full statement, which went earlier, the letter you sent to the chairman and other members of the committee dated February 27, 1995. That will also be included in full.

Dr. Hilton, we're delighted to have you here. Dr. Hilton comes to us in his role as a member of the Utah Bar and an authority on family privacy issues. Welcome.

Mr. HILTON. I'm delighted to be here, Mr. Chairman. I would like to request as well, in addition to the written comments I've already provided your counsel, that my written opening statement, as well as a copy of the complaint in the litigation I'm going to be talking about, be inserted in the record.

Mr. HORN. OK. And you also wrote us a letter dated March 15.

Mr. HILTON. Yes, sir.

Mr. HORN. And that will go in the record in full, also.

Mr. HILTON. Thank you.

Mr. HORN. How large is that complaint? What are we talking about, 30 pages?

Mr. HILTON. This is the complaint right here.

Mr. HORN. That's fine. It's when I get to the 800-page variety that I get a little nervous.

Mr. HILTON. No.

Mr. HORN. I'm just thinking of saving the government money.

Mr. HILTON. Thank you. I'd like to begin my comments today with a brief story. In 1993, a new family moved into a local Utah school district from out of State. Two children in the family were enrolled in a federally funded Chapter 1 reading program.

When their mother went to a parent-teacher conference that fall, the mother found that the children had been given a psychological self-esteem test without her knowledge or consent or that of her husband. On this test, the 7- and 8-year-old children had been asked, among other things, to engage in a self-labeling process:

"I cause trouble to my family. Yes or no." "I behave badly at home. Yes or no." "I pick on my brothers and sisters. Yes or no."

The children were also asked to label their family:

"My parents expect too much of me. Yes or no." "My family is disappointed in me. Yes or no." "I'm picked on at home. Yes or no."

The mother immediately contacted the children's teachers and counselors and went to the district offices and said, "Please don't test my children" and asserted what she understood were her rights under the then Hatch amendment, pre-Grassley.

Ironically, on the very day that the Senate was considering the Grassley amendment and debating it on the floor, where this test,

by the way, was one of those put in the record as objectionable, the district chose to test the children again, using the same test.

In this case, the older child objected, saying his mother didn't want him to take the test and was assured by the district, "Don't worry, we've talked to your mother," and the child is retested again.

Why? Well, they had a district policy that said, "The home, community, and school are jointly responsible for the physical, social, emotional, and moral development of the youth." This case has been going on for 20 years. The school's decision about what was most appropriate for that child was given higher priority than what the parents wished.

Legal redress was sought for the parents and children. On one front, this case history and numerous others in my State prompted our legislature to adopt legislation requiring protection of privacy and family autonomy in all educational matters, regardless of source of funding. That legislation, as it was amended in 1995, is included in my original testimony and was adopted unanimously in 1995.

On the other front, with support from the Rutherford Institute, Federal legislation was filed asking for a dollar in nominal damages and trying to clarify that the parents did have rights under this legislation.

In February, Judge Green accepted as true all the allegations in this complaint and dismissed the proceeding for, among other reasons, he found that there was no right of private enforcement—that is, the only relief available was through administrative channels—and that there was no right of a parent to seek vindication in Federal court.

Therefore, I'm here as a private citizen today requesting that Congress make explicit its desire to protect family autonomy and privacy. I make three basic suggestions in the detailed written testimony submitted:

First, make specific findings and policy statements regarding the importance of the family. I've suggested several. They'll help those implementing and living with the law understand why Congress is choosing to act the way it is.

Second, agreeing with Representative Maloney, there are many technical corrections to eliminate confusion and vagaries in your present legislation, I have several suggestions that we've worked through in Utah, both in theory and in practice now for a year. I would recommend those be considered.

Last, specifically provide for a private right of action. I recommend language with that. The present proposal, like the Grassley amendment, like the Hatch amendment, is silent on this issue. None is prohibited, but it's not allowed and, at least in the tenth circuit, without it being specifically provided, it's unenforceable. I think you could read the second and fifth circuits differently but, in my circuit, it gives us no relief.

Now, taking these affirmative steps will allow families to determine how they will be protected and not those who have a political or economic tie-in to the supervisors, the administrators in charge.

In my opinion, taking these affirmative steps will help give additional meaning to this new Contract with America that I've heard

so much about where I live. When our Nation began, we had a contract prepared, called the Declaration of Independence.

Those who exercised their God-given rights of fulfilling their duties and moral responsibilities completed their part of the contract by pledging their lives, fortunes, and sacred honor. God fulfilled his part by divine intervention on behalf of the colonists.

A new contract, proposed at Gettysburg several decades later, in the midst of a civil war, tried to ensure that the rights provided by the Declaration of Independence be given to all, regardless of race and creed.

Finally, in 1940, the Supreme Court rewrote a new contract with America and began applying the protections of the Bill of Rights on States and local governments to protect individuals and families.

I heard much in the opening statements about efforts to write a new Contract with America. My question is, which America? Can it be the unborn or those millions in the future? Lack of the 14th amendment in deficit spending would probably say no.

Rather, let your contract be with the family, the foundation of society that collectively will have a greater impact on our freedoms than anything else. You can make this contract by one, declaring findings and policies in support of the family, clarifying ambiguities in present law, and establishing a private right of action in favor of families in this and other legislation.

I can only bind myself and encourage my own family to follow, but I would be grateful for your kind attention and protection of our freedoms through careful technical work on your legislation.

[The prepared statement of Mr. Hilton follows:]

PREPARED STATEMENT OF MATTHEW HILTON, J.D., PH.D., A MEMBER OF THE UTAH BAR AND AN AUTHORITY ON FAMILY PRIVACY ISSUES

Chairman Horn and other distinguished members and witnesses: Thank you for the opportunity of speaking with you today. I would like to begin my comments with a story.

In 1993, a new family moved into a local Utah school district from out of state. Two children in the family were enrolled in a Chapter I reading program. When their mother attended a parent-school conference that fall, the mother found that the children had been given a psychological, self-esteem test without her or her husband's knowledge or consent. On this test their seven and eight year old children had been asked, among other things, to label themselves regarding the following demeaning behavior:

I cause trouble to my family: Y N
I behave badly at home: Y N
I pick on my brothers and sisters: Y N

The children were also asked to label their family as follows:

My parents expect too much of me: Y N
My family is disappointed in me: Y N
I am picked on at home: Y N

The mother immediately contacted her children's teachers, counselors and the district offices and explained her children were not to be tested. She also indicated that she believed their conduct had violated the provisions of the Hatch Amendment.

Ironically, on the very day that the Senate was considering the Grassley amendment last session, (and placing in the Congressional Record this test as an example of what would be prohibited), the school district chose to test this mother's children again, with the very same self-esteem, psychological test. Over one of the children's objections that his mother did not want him taking the test, the test was readministered with the assurances to the child that the school district had spoken with his mother. Why was this done? Perhaps as part of fulfilling existing district policy where "the home, community, and the school are jointly responsible for the physical, social, emotional and moral development of the youth." In this case, obviously, in

practice, the school's decision about what was most appropriate for the social and emotional development of the children prevailed over that of the parents.

Legal redress was sought for the parents and children. On one front, the case history (and many others) were brought to the attention of the Utah legislature. Family privacy legislation adopted in 1994 which applied the prohibitions, regardless of funding, to all curriculum or extra-curricular activities and included a definition of written parental consent. The present legislation, amended unanimously in 1995, is in my written testimony. On another front, with support from the Rutherford Institute, federal litigation was filed seeking nominal damages and vindication of the rights of the parents and children. In February of 1995, federal judge J. Thomas Greene, accepting as true all of the allegations in the complaint, dismissed the complaint because, among other things, the then applicable Hatch Act did not provide for a right of private enforcement.

I am here today as a private citizen requesting Congress to make explicit its desire to protect family autonomy and privacy. Specific language and ideas in three areas have been suggested in written testimony already submitted.

First, *make specific findings and policy statements regarding the importance of the family.* Several are suggested. Such statements will give those charged with implementing and living the law with a broader understanding and awareness of why Congress is choosing to protect families.

Second, *make technical corrections to eliminate confusion and clarify the proposed legislation.* Various suggestions have been submitted based in part on the practical sides of the Utah experience and that in court.

Third, *specifically provide for a private right of action.* The present proposal—like the Grassley Amendment—is silent on this issue. None was ever prohibited; allowing the same would let families—those the legislation is designed to protect—to determine when and how to protect their rights rather than limiting protection to those who have a long term economic and political relationship with offending parties.

Taking these affirmative steps will help give additional meaning to the new Contract with America. When our nation began, a contract was prepared called the Declaration of Independence. Those who exercised their God given rights of fulfilling their duties and moral responsibilities completed their part of the contract giving their lives, fortunes and sacred honor. God fulfilled his part by Divine intervention on behalf of the colonists. A new contract was proposed at Gettysburg, several decades later, in the midst of a Civil War, in an effort to ensure that the rights afforded by the Declaration of Independence be given to all, regardless of race or creed. In 1940, the Supreme Court re-wrote a new contract with America and began applying in a piece-meal fashion various provisions of the Bill of Rights to protect individuals and families from state and local governments.

Today, Congress is seeking to make a new contract with America. Which America? Can it be the unborn of America, those millions in the future? A lack of Fourteenth Amendment protection and deficit spending would tend to indicate no. Rather, let this new contract of America be with the American family—the foundation of a stable society, that institution which collectively, to a large degree, will have a greater impact on the continuation of freedom than anything else in the nation. Congress can make a new contract with America's families by (1) declaring findings and policies in the support of the family, (2) clarifying ambiguities in the proposed and existing law, and (3) establishing a private right of action in favor of families in this and other legislation. While I can only bind myself and encourage the members of my family to follow, I would be grateful for your attention and protection of our freedoms.

MATTHEW HILTON, J.D., PH.D.
March 15, 1995.

Rep. STEPHEN HORN,
Chairman, Committee on Government Reform and Oversight,
Subcommittee on Government Management, Information, and Technology,
B-373 Rayburn Building,
Washington, DC.

Re: H.R. 11

DEAR CHAIRMAN HORN: Thank you for the opportunity to suggest possible amendments to H.R. 11 presently before this committee. The basis for my comments are derived, in part, from working as a licensed member of the Utah State bar while

(1) litigating in federal court claims seeking private enforcement of 20 U.S.C. § 1232h(b) (the Hatch (now Grassley) amendment) and (2) serving as primary draftsman of Utah legislation entitled the Educational Rights and Privacy Act (§§ 53A-13-301, 302 U.C.A.) for the State of Utah and Recognizing Constitutional Freedoms in the Schools (§§ 53A-13-101.1, 101.2, 101.3 U.C.A.). Copies of the most current, unanimously adopted versions of these two pieces of legislation are included with this testimony. A copy of the district court's ruling in the litigation is also enclosed. I am appearing today in the capacity as a private citizen.

I strongly support what I understand is an effort of this to protect family privacy and autonomy. "[T]he liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'" *Smith* v. *Organization of Foster Families*, 431 U.S. 816, 842 (1977) (plurality opinion) (citations omitted). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin* v. *Yoder*, 406 U.S. 205, 232 (1972). Indeed, in the words of then Justice Dallin Oaks, speaking for the Utah Supreme Court, "family autonomy helps to assure the diversity characteristic of a free society. There is no surer way to preserve pluralism than to allow parents maximum latitude in rearing their own children. Much of the rich variety of American culture has been transmitted from generation to generation by determined parents who were acting against the best interest of their children, as defined by official dogma." *In re J.P.*, 648 P.2d 1364, 1376 (Utah 1982). With a desire to protect the interests outlined above, I would recommend that H.R. 11, as presently written, be revised to address issues raised by the following four questions:

(1) Are there convincing reasons why the legislation does not have a short title and basic factual or policy findings to justify the family privacy protections that are obviously desired by this legislation?

It could well be appropriate for the committee to consider adopting as a preamble to the legislation certain factual or policy statements. You may wish to consider the following:

Section 401. This Act shall be known and may be cited as the Family Privacy Protection Act.

Section 402. Legislative Intent and Findings: It is the intent of Congress to ensure that the rights of parents and children to family privacy and autonomy are protected. Protecting family privacy and autonomy is a compelling interest of government because:

(a) the rights that are present in a parent-child relationship in a family unit are presumed to be an inherent and inalienable right derived from a relationship with a Divine Creator, which relationship has natural or prior existence to those that exist with government;

(b) the family unit is where parents have the right and responsibility to transmit their own rich cultural traditions regarding deeply held values, religious beliefs and practices, other moral views, political views and other aspects of the heritage that is part of the family life in the home;

(c) the family unit is the primary location where parents and children develop integrity, diligence, kindness and courtesy and other traits of character necessary for democratic values and institutions to flourish;

(d) the family unit is the foundation of a stable society; and

(e) intrusion by government into the privacy and autonomy of the family unit tends to undermine the ability of members of the family to exercise rights and responsibilities which provide these critical benefits to society. Thus, at all times, family privacy and autonomy is to be given greater preference than administrative convenience.

By providing clarification as to intent, specific guidance can be given in terms of implementing regulations or judicial interpretation of the same.

(2) Are there convincing reasons why much of the language in the proposed amendment is written so broadly, ambiguous in parts, or that terms of consent are not defined?

Actions of the United States Supreme Court have recognized that administrative agencies have expansive power in implementing policy decisions arising from ambiguous legislation. While not consistently applied by the Court,[1] beginning in 1984 with the case of *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984),

[1] *See* Kenneth Culp Davis and Richard J. Pierce, *Administrative Law Treatise*, Vol. 1, § 3.6 at 123-131 (1994); Thomas W. Merrill, "Judicial Deference to Executive Precedent," 101 Yale Law Journal 969 (1992).

the Court created a two-step process by which it determined it would give great deference to an administrative interpretation of an ambiguous statute. "When a court reviews an agency's construction of the statute it administers, it is confronted with two questions. First, always, is the question of whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 842-843.

If one was to compare the proposed statute with the privacy law used in Utah, (and amended after a year in practice), some of the following differences become apparent:

1. Why is the generic "survey, analysis, or evaluation" used to explain all types of intrusion that could occur outside of the educational setting? Is that not vague when matters of medical health, juvenile or foster care and related matters are addressed? Is this intended to remove psychological testing that had been included in the earlier Hatch Act?

2. In the federal court ruling included with this testimony, the judge as not sure that the parental consent requirement applied to all of the categories of the statute. As such, and in an effort to limit the possibility of having the word "reveals information" be construed as being a "strict liability" standard, I would recommend that the language of the Utah legislation **(bolded)** be substituted in page 1, lines 12-13 as follows:

"to a survey, analysis, or evaluation **without the prior written consent of the student's parent or legal guardian, in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:"**

In addition, guaranteed rights of expression of personal belief and opinion guaranteed by § 53A-13-101.3 (seeking to implement broadly First Amendment protections for students) would not be restricted by the prohibitions. This is an area which does not appear to be considered at all in the current legislation. I would recommend that the issue be considered.

3. The Utah legislation provides different perspectives on the prohibited categories regarding the student or his family member:

(1) political affiliations **or philosophies**

(3) sexual behavior, **orientation,** or attitudes

(5) **critical appraisals of individuals with whom the student or family member has close family relationships**

4. Why allow those who are to be restricted to make the sensitive determination on page 1, lines 15-16 of what is potentially embarrassing? It would be clearer to simply eliminate that option and conform it to the Utah language.

5. Why not include more specific provisions regarding the nature and means of obtaining written consent? (See sections § 53A-13-301 (3) and (4) of the Educational Rights and Privacy Act, enclosed.) Faulty notification and consent were major reasons why the litigation referred to in the enclosed transcript was brought.

6. What is "academic performance" intended to mean as stated in Section 401 (b), on page 2, line 8? This broad term should be clarified. (Does it apply to all curriculum, in a school, for example, or does it include extracurricular activities as well?)

(3) Are there convincing reasons why there is no provision allowing private enforcement of the family privacy protections outlined in the legislation?

The enclosed transcript demonstrates how similar language without express allowance for private enforcement has been recently interpreted in federal litigation in Utah seeking to privately enforce the former Hatch Act, now Grassley Amendment, (now codified in 20 U.S.C. § 1232h(b),) did not allow private enforcement. (It is this law from which this amendment draws its pattern.) The district court based this ruling on a Tenth Circuit case that had concluded that when Congress is silent on the issue, and there are administrative remedies in place, there is a presumption that Congress intended to foreclose the opportunity of private enforcement. *See L'aarke v. Benkula*, 966 F.2d 1346, 1347 (10th Cir. 1992). If members of Congress are concerned with the violations of family privacy, language allowing for private

enforcement should be included so to not be thwarted by administrative agencies that enforce a similar law only seventeen times in sixteen years.[2]

I would suggest that private enforcement is a remedy that should be considered. Possible language to express that concept could be included as an amendment (or addition) either to page 2, line 17, or as a separate section which states as follows: **The protections afforded by this Act shall be enforced by procedures established by the relevant department or agency as well as any private enforcement sought by any aggrieved persons pursuant to 42 U.S.C. § 1983 or other recognized means of securing redress.**

The amendments adopted by Congress last year to 20 U.S.C. § 1232h(b) could also be considered to clarify the duties on the respective departments who are charged, in part, with enforcement of the provisions of the legislation.

(4) Is it the intent of this committee to revise or impede in any way the effect of the amendments made last term in 20 U.S.C. § 1232(h)b, commonly called the Grassley Amendment, (to the former Hatch Act), or Protection of Pupil Rights Amendment?

If there is no intent to change the impact of this legislation from the last session, it would seem that the provisions of Section 401(b), page 2, lines 7-10 are not needed. If there is, then additional clarification would need to me made on those provisions. Because it is my understanding that this is not intended, these other matters will not be reviewed here.

I hope that this information has been helpful in your careful deliberations.

Sincerely yours,

Matthew Hilton.

Enclosures: Educational Rights and Privacy Act Amendment, 1995 General Session, State of Utah, H.B. 57 §§53A-13-101.1, 101.2, 101.3 U.C.A. Transcript, *D.P., et. al.* v. *Alpine School District,* Case No. 94-181, United States District Court for the District of Utah, February 21, 1995, The Honorable J. Thomas Greene

[2] *See* Richard W. Riley, Secretary of the U.S. Department of Education, to Hon. Charles E. Grassley, October 7, 1993, at S 860 (February 4, 1994).

EDUCATIONAL RIGHTS AND PRIVACY ACT AMENDMENTS

1995 GENERAL SESSION

STATE OF UTAH

Sponsor: Shirley V. Jensen

AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING THAT THE PUBLIC EDUCATION SYSTEM SHALL PROTECT THE PRIVACY OF STUDENTS, THEIR PARENTS, AND THEIR FAMILIES; PROVIDING FOR A WAIVER; PROVIDING FOR WITHDRAWAL OF AUTHORIZATION TO DISCLOSE; PROVIDING AN EXCEPTION; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53A-13-301, as enacted by Chapter 267, Laws of Utah 1994

53A-13-302, as enacted by Chapter 267, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53A-13-301** is amended to read:

53A-13-301. Application of state and federal law to the administration and operation of public schools.

(1) Employees and agents of the state's public education system shall [~~comply~~] protect the privacy of students, their parents, and their families, and support parental involvement in the education of their children through compliance with the protections provided for family and student privacy under Section 53A-13-302 and the Federal Family Educational Rights and Privacy Act[~~, as enacted by the United States Congress,~~] and related provisions under 20 U.S.C. 1232 (g) and (h), in the administration and operation of all public school programs, regardless of the source of funding.

(2) Each public school district shall enact policies governing the protection of family and student privacy as required by this section.

Section 2. Section **53A-13-302** is amended to read:

53A-13-302. Activities prohibited without prior written consent -- Validity of consent

– Qualifications.

Policies adopted by a school district under Section 53A-13-301 shall include prohibitions on

(1) the administration to a student of any psychological or psychiatric examination, test, or treatment, or any survey, analysis, or evaluation without the prior written consent of the student's parent or legal guardian, in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:

(a) political affiliations or, except as provided under Section 53A-13-101.1 or rules of the State Board of Education, political philosophies;

(b) mental or psychological problems;

(c) sexual behavior, orientation, or attitudes;

(d) illegal, anti-social, self-incriminating, or demeaning behavior;

(e) critical appraisals of individuals with whom the student or family member has close family relationships;

(f) religious affiliations or beliefs;

(g) legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and

(h) income, except as required by law.

(2) The prohibitions [~~regarding the inquiry or disclosing of information~~] under Subsection (1) shall also apply [~~to~~] within the curriculum [~~or~~] and other school activities unless prior written consent of the student's parent or legal guardian has been obtained.

(3) Written parental consent is valid only if a parent or legal guardian has been first given written notice and a reasonable opportunity to obtain written information concerning:

(a) records or information, including information about relationships, that may be examined or requested;

(b) the means by which the records or information shall be examined or reviewed;

(c) the means by which the information is to be obtained;

(d) the purposes for which the records or information are needed;

(e) the entities or persons, regardless of affiliation, who will have access to the personally identifiable information; and

(f) a method by which a parent of a student can grant permission to access or examine the personally identifiable information.

(4) (a) Except in [~~the case of exigent circumstances~~] response to a situation which a school employee reasonably believes to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Act, or by order of a court, disclosure to a parent or legal guardian must be given at least two weeks[~~, but not more than five months~~] before information protected under this section is sought.

(b) Following disclosure, a parent or guardian may waive the two week minimum notification period.

(c) Parental authorization shall be valid until the commencement of the subsequent school year or until one of the following occurs:

(i) the child completes or withdraws from the course, activity, or program for which it was granted; or

(ii) a written withdrawal of authorization is submitted to the school principal by the authorizing parent or guardian.

[~~(b)~~] (d) A general consent[~~, including a general consent~~] used to approve admission to school or involvement in [~~a~~] special education [~~or~~], remedial [~~program or regular~~] education, or a school activity[~~;~~] does not constitute written consent under this section.

(5) This section does not limit the ability of a student under Section 53A-13-101.3 to spontaneously express sentiments or opinions otherwise protected against disclosure under this section.

53A-13-101.1. Maintaining constitutional freedom in the public schools.

(1) Any instructional activity, performance, or display which includes examination of or presentations about religion, political or religious thought or expression, or the influence thereof on music, art, literature, law, politics, history, or any other element of the curriculum, including the comparative study of religions, which is designed to achieve secular educational objectives included within the context of a course or activity and conducted in accordance with applicable rules of the state and local boards of education, may be undertaken in the public schools.

(2) No aspect of cultural heritage, political theory, moral theory, or societal value shall be included within or excluded from public school curricula for the primary reason that it affirms, ignores, or denies religious belief, religious doctrine, a religious sect, or the existence of a spiritual realm or supreme being.

(3) Public schools may not sponsor prayer or religious devotionals.

(4) School officials and employees may not use their positions to endorse, promote, or disparage a particular religious, denominational, sectarian, agnostic, or atheistic belief or viewpoint.

History: C. 1953, 53A-13-101.1, enacted by L. 1993, ch. 96, § 2.
Effective Dates. — Laws 1993, ch. 96 became effective on May 3, 1993, pursuant to Utah Const., Art. VI, Sec. 25.

53A-13-101.2. Waivers of participation.

(1) If a parent with legal custody or other legal guardian of a student, or a secondary student, determines that the student's participation in a portion of the curriculum or in an activity would require the student to affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of a religious right or right of conscience, the parent, guardian, or student may request:

(a) a waiver of the requirement to participate; or

(b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.

(2) The school shall promptly notify a student's parent or guardian if the student makes a request under Subsection (1).

(3) If a request is made under this section, the school shall:

(a) waive the participation requirement;

(b) provide a reasonable alternative to the requirement; or

(c) notify the requesting party that participation is required. The school shall ensure that the provisions of Subsection 53A-13-101.3(3) are met in connection with any required participation.

History: C. 1953, 53A-13-101.2, enacted by L. 1993, ch. 96, § 2.
Effective Dates. — Laws 1993, ch. 96 became effective on May 3, 1993, pursuant to Utah Const., Art. VI, Sec. 25.

53A-13-101.3. Expressions of belief — Discretionary time.

(1) Expression of personal beliefs by a student participating in school-directed curricula or activities may not be prohibited or penalized unless the expression unreasonably interferes with order or discipline, threatens the well-being of persons or property, or violates concepts of civility or propriety appropriate to a school setting.

(2) (a) As used in this section, "discretionary time" means noninstructional time during which a student is free to pursue personal interests.

(b) Free exercise of voluntary religious practice or freedom of speech by students during discretionary time shall not be denied unless the conduct unreasonably interferes with the ability of school officials to maintain order and discipline, unreasonably endangers persons or property, or violates concepts of civility or propriety appropriate to a school setting.

(3) Any limitation under Sections 53A-13-101.2 and 53A-13-101.3 on student expression, practice, or conduct shall be by the least restrictive means necessary to satisfy the school's interests as stated in those sections, or to satisfy another specifically identified compelling governmental interest.

History: C. 1953, 53A-13-101.3, enacted by L. 1993, ch. 95, § 4.

Effective Dates. Laws 1993, ch. 95 became effective on May 3, 1993, pursuant to Utah Const., Art. VI, Sec. 25.

53A-13-102. Instruction on the harmful effects of alcohol, tobacco, and controlled substances — Assistance from the Division of Alcohol and Drugs.

(1) Sections 32A-12-209 and 76-10-105 and Subsection 58-37-8(2)(a)(i) prohibit school-aged persons from using alcohol, tobacco, and controlled substances. The State Board of Education shall adopt rules providing for instruction at each grade level on the harmful effects of alcohol, tobacco, and controlled substances upon the human body and society. The rules shall require but are not limited to instruction on the following:

(a) teaching of skills needed to evaluate advertisements for, and media portrayal of, alcohol, tobacco, and controlled substances;

(b) directing students towards health and productive alternatives to the use of alcohol, tobacco, and controlled substances; and

(c) discouraging the use of alcohol, tobacco, and controlled substances.

(2) At the request of the board, the Division of Alcohol and Drugs shall cooperate with the board in developing programs to provide this instruction.

(3) The board shall participate in efforts to enhance communication among community organizations and state agencies, and shall cooperate with those entities in efforts which are compatible with the purposes of this section.

History: C. 1953, 53A-13-102, enacted by L. 1988, ch. 2, § 175; 1992, ch. 30, § 94.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, substituted "32A-12-209" for "32A-12-13" in the first sentence of Subsection (1).

Cross-References. — Controlled substances, Title 58, Chapter 37.

Teen substance abuse intervention and prevention, § 62A-8-201 et seq.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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D P, et al.,	)	Case No. C94-181
Plaintiffs,	)	Salt Lake City, Utah
	)	Date: February 21, 1995
vs.	)	Time: 10:30 a.m.
ALPINE SCHOOL DISTRICT, et al.,	)	(Court's ruling)
Defendants.	)	

REPORTER'S TRANSCRIPT

BEFORE: THE HONORABLE J. THOMAS GREENE

APPEARANCES OF COUNSEL:

For the Plaintiff: MATTHEW HILTON, ESQ.

For the Defendant: BLAKE OSTLER, ESQ.

Court Reporter: REEVE M. BUTLER, RPR
Official Court Reporter
Rm. 224 Federal Bldg.
350 S. Main Street
Salt Lake City, Utah 84101

Tel. 328-0837

THE COURT: All right. Thank you. I'm sure that you can tell from my questions that I'm troubled by the scope of this lawsuit as applied to the facts of this particular case.

I don't really think that we're talking about psychological examination, testing or treatment that had it's primary purpose to reveal information concerning mental and psychological problems potentially embarrassing to parents or family, or sex behavior or attitudes or any of the other 7 categories within psychiatric and psychological examination testing or treatment set forth in Section 1232h of Title 20 of the United States Code.

It seems to me that what we have is something that was incidental if at all in connection with some other kind of thing that was being pursued, namely reading and things of that nature. In all events I don't consider that the facts of the case come within the definition of what is sought to be prohibited in the statute.

Secondly, I don't think that the statute itself affirmatively requires consent although it does require availability for inspection by parents or guardians, but fundamentally it seems to me that there is no implied right of action that exists under the statute, that as a matter of law it does not exist and that in view of the comprehensive enforcement scheme set forth authorized by the statute in

Section 3474 of Title 20 and in place under the regulations that provide for review of complaints, reports, investigation, findings, enforcement that all of that is in place.

I understand the argument that that was not in place at the time the statute was enacted, however it was authorized and it was in place at all times when these people were involved in the program.

I don't think the United States Supreme Court cases that you've referred to, Franklin or the other cases modify or make less of a precedent binding upon this court, the case of Monsi L'ggrke v. Benkula 966 F. 2d 1346.

I think the presence of the legislative intent here of the provisions of enforcement come within the statement and conception of the court that where a statute provides an administrative enforcement mechanism the presumption is that no private cause of action is intended.

Mr. Hilton makes a very strong point that there were times when there seemed to be no enforcement in place yet it seems to me that there is no, no private right of action granted to the plaintiffs in this case, that silence is not enough, that Senator Hatch's oratory is not enough and we don't have in place here a scheme applied to this kind of testing for this purpose in this case.

I do not intend this as a precedent as to all aspects of that statute. I'm not trying to go that far but I

don't think there is a bootstrap argument that brings 1983 into play where there is in this case no private right action and no implied right of action, no standing, and it appears to me that the due process arguments do not justify going forward here either.

There is not a sufficient coherent allegation with respect to violation of familial rights. I think the Tenth Circuit case of Griffin v. Strong applies with respect to due process. I think there is that they don't rise to, on the level of violation of a due process right under the facts of this case.

I'm going to grant the motion to dismiss the case as a matter of law and it renders the other aspects and motion that applied to the case as moot. I apply that to the existing complaint and to the proposed second amended complaint which both parties agree is appropriate for reach and scope here.

There would be no point in having another proceeding if I were to procedurally permit the filing of the complaint and then talking about it again and you agree with that, Mr. Hilton?

MR. HILTON: Absolutely, Your Honor.

THE COURT: I appreciate the quality of your advocacy, it's been very good and I appreciate the presence of these plaintiffs. It's apparent to me that they are earnest

and caring people and the children look just like my two t used to look, they are very sweet, but that's the ruling of the court.

You may prepare an order to that effect. Thank you very much.

MR. OSTLER: Thank you. I'll do that.

MR. HILTON: Thank you very much.

THE COURT: Court's in recess.

(Excerpt concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

I, REEVE M. BUTLER, do hereby certify that I am an Official Court Reporter for the United States District Court for the District of Utah;

That as such Reporter I attended the hearing of the foregoing matter on February 7, 1995 and thereat reported in Stenotype all of the testimony and proceedings had, and caused said notes to be transcribed into typewriting; and the foregoing pages numbered from 2 to 5 constitute a full, true and correct report of the same.

DATED at Salt Lake City, Utah, this 7th day of February, 1995.

REEVE M. BUTLER, RPR

Matthew Hilton (#A3655)
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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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D.P. and A.P., for themselves individually, and for their children B.P. and N.P.,	:	
Plaintiffs,	:	SECOND AMENDED COMPLAINT
vs.	:	
Victoria Anderson and Rebecca Rigby, in their personal capacities, and Alpine School District, a governmental entity,	:	Civil No. 94-C- 181 G
Defendants.	:	

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INTRODUCTION

1. This case seeks vindication of federally guaranteed constitutional rights of freedom of association, family and parental privacy and autonomy, as well as those articulated in the Protection of Pupil Rights Amendment ("PPRA," 20 U.S.C. § 1232h(b); 34 C.F.R. § 98.1 et. seq.).

2. This is a 42 U.S.C. § 1983 civil rights action by a father, a mother, and two children to redress intrusion into and violation of these federally protected rights caused by the Defendants intentional administration to Plaintiffs B.P. and N.P.

certain psychological examinations, testing or treatment, without obtaining the knowing and voluntary informed consent of either the parent or the minor children involved.

3. Upon information and belief, Defendant Alpine School District, while acting under color of state law and pursuant to official policy, custom and practice, has intentionally, recklessly, or unprofessionally violated the parental liberty and privacy rights of Plaintiffs D.P. and A. P., and the familial associational rights of D.P., A.P., B.P. and N.P..

4. Upon information and belief, Defendants Rigby and Anderson, while acting under the color of state law and contrary to the intended policy, custom and practice of Alpine School District, have intentionally, recklessly, unprofessionally, or with deliberate indifference, violated the parental and privacy liberties of Plaintiffs D.P. and A.P., and the familial associational and privacy rights of D.P., A.P., B.P. and N.P.

5. The Defendants, acting under the color of state law and either pursuant to official policy, custom and practice, or in derogation of official policy, custom and practice, have intentionally, in violation of professional duties, or with reckless disregard of, or in deliberate indifference to, Plaintiffs' rights, invaded Plaintiffs' constitutionally protected right of familial association, privacy rights, right to refuse medical treatment, and parental liberty to raise their children, as well as violating the provisions of PPRA.

6. The Defendants' conduct has violated the Plaintiffs' familial associational rights and individual right to privacy secured to the Plaintiffs by U.S. Const., Amend. I, IX and XIV and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. Defendants' conduct also violated Plaintiff parents' right to parental liberties and the raising of their children secured to the Plaintiffs by U.S. Const., Amend. I, IX and XIV, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

8. Defendants' conduct has also violated Plaintiffs right to unwanted medical treatment protected by the Fourteenth Amendment.

9. Defendants' conduct has caused the Plaintiffs' hardship, emotional distress, and unnecessary expenditure of time and effort.

10. Plaintiffs seek an award of damages against the Defendants in their personal capacities and against Defendant Alpine School District.

11. These claims are asserted against the Defendants for their actions and omissions which have resulted in the Plaintiffs being deprived of their time-honored fundamental and constitutional, statutory rights of familial association, privacy and parental liberties.

II.

JURISDICTION AND VENUE

12. The jurisdiction of this Court is invoked under 28 U.S.C. § 2201 and 2202, 28 U.S.C. § 1331 and 1343, U.S. Const.,

Amend. I, IX and XIV, and the Civil Rights Act of 1871, 42 U.S.C. § 1983. This action arises under the Constitution and laws of the United States, including the Civil Rights Act of 1871, 42 U.S.C. § 1983 and § 1988.

13. Plaintiffs further state that this action arises from an actual case and controversy required by Article III of the United States Constitution.

14. Plaintiff's claim arose in this judicial district and venue lies in this district pursuant to 28 U.S.C. § 1391(b)(1), (2) or (3).

III.

PARTIES

15. Plaintiff D.P. and A.P. are the natural and lawful parents of Plaintiffs B.P. and N.P., presently residing with them at the family home in Lindon, Utah County, Utah.

16. During the 1993-1994 school year, Plaintiff B.P. was a third grade student, receiving federally funded Chapter I services, while attending Windsor Elementary School, Alpine School District.

17. During the 1993-1994 school year, Plaintiff N.P. was a second grade student, receiving federally funded Chapter I services, while attending Windsor Elementary School, Alpine School District.

18. Alpine School District is a governmental entity organized under the laws of the State of Utah.

19. At the time of the events complained of herein, Defendant Victoria Anderson was an employee of Alpine School District and was in charge of all Student Services and is sued in her personal capacity.

20. At the time of the events complained of herein, Defendant Rebecca Rigby was an employee of Alpine School District and as, as a second-level counselor, directly involved in administering the psychological testing or treatment complained of to federally funded Chapter I students at Windsor Elementary School, such as Plaintiffs B.P. and N.P. Defendant Rigby is sued in her personal capacity.

IV. STATEMENT OF THE CASE

21. At all times relevant hereto, all of the Defendants either acted under the color of state law, custom or usage, acting within the scope of their authority and public employment, or, as individuals, were acting under the color of state law and pursuant to their public position, but outside of the custom, practices and procedures of the Alpine School District.

22. All of the acts alleged to have been done or not to have been done by Defendant Alpine School District, were done (either intentionally, in reckless or callous disregard of Plaintiffs' rights, or in violation of professional standards) directly or indirectly through their agents, servants, or representatives, acting under the color of state law, custom or usage, within the

scope of their authority and employment of the individual Defendants.

23. At the beginning of the 1993-1994 school year, both B.P. and N.P. brought home permission slips for their participation in extra reading assistance programs in federally funded Chapter I with an invitation to attend an orientation. The permission slip and notification of B.P. made no such reference to any self-concept skills or any self-esteem program. (Upon information and belief, a copy of the information accompanying the permission slip for B.P., similar to that which was brought home by B.P., is attached hereto as Exhibit 1, and incorporated herein by this reference.) The permission slip of N.P. made a reference to the fact that when leaving the room for one-half an hour each day, N.P. would, among other things, have "[r]eading and self-concept skills reinforced" with "[r]eading tests and evaluations would be given your child". (Upon information and belief, a copy of the information accompanying the permission slip for N.P., similar to that which was brought home by N.P., is attached hereto as Exhibit 2, and incorporated herein by this reference). Both notices indicated that all of the services were provided by federal funds.

24. Plaintiff A.P. attended the orientation regarding the federally funded Chapter I program provided by the Alpine School District in the fall of the 1993-1994 school year. A specific reference made to working with children's self-concept at that

meeting was made by Defendant Rigby who explained that it had specific reference to building the esteem of children that were going through divorce. that there would be self-esteem groups for such children, and that no children would participate in such a group without written parental permission. In light of this explanation, and there being no disclosure of any actual or intended psychological testing or treatment, Plaintiff A.P. executed the permission slip. Had Plaintiff A.P. been fully informed of the testing or treatment that would be undertaken with her children, neither she nor her husband, D.P., would have agreed to the same.

25. Later that fall, when Plaintiff A.P. attended parent-teacher conference for B.P. and N.P. with the federally funded Chapter I staff, she was given copies of the test given and scored for B.P., (attached hereto as Exhibit 3, and incorporated herein by this reference), and for N.P. (attached hereto as Exhibit 4, and incorporated herein by this reference).

26. When Plaintiff A.P. found the tests had been given, she vehemently objected to the tests having been given and met with each teacher of her children and Defendant Rigby, giving specific instructions that her children were not to be tested in this manner and that, in the opinion of Plaintiff A.P., Defendants' conduct violated federal law.

27. That evening, at their home, Plaintiffs A.P. and D.P. reviewed the tests the children had been taken at their home that

evening. In their opinion as parents, requiring their children to take these tests involved them in a self-labeling process the parents did not approve of and directly undermined their efforts to direct the care, upbringing, and education of their children. In particular, Plaintiffs A.P. and D.P. felt that when the Defendants required B.P. and N.P. to respond to various statements on the Piers-Harris Children's Self-Concept Scale, it necessarily followed that (1) there was disclosure of family matters that they as parents desired to keep private within their family and (2) the very process would required their children to engage in what they as parents felt was a negative self-labeling experience, all of which was contrary to and undermined their efforts as parents to instill specific views, attitudes and world views in their children.

28. Plaintiffs D.P. and A.P. believe that by requiring their children B.P. and N.P. to respond to the Piers-Harris Children's Self-Concept Scale the Defendants intentionally sought to, (and with the primary purpose to,) elicit personal, non-academic information and required their children to begin self-labeling themselves by answering yes or no to the following questions in the following categories:

a. Mental and psychological problems potentially embarrassing to the student or his family (Statement #'s 74, 78.)

b. Sex Behavior and Attitudes: (Statement #'s: 29, 54, 57, 69, 73.)

c. Anti-social, self-incriminating or demeaning behavior: (Statement #'s: 2, 3, 4, 6, 7, 8, 10, 11, 13, 14, 18, 20, 22, 25, 26, 27, 31, 32, 34, 40, 43, 45, 46, 47, 48, 50, 53, 56, 58, 59, 61, 64, 68, 71, 72, 74, 75, 78, 79.)

d. Critical appraisals of other individuals with whom the respondents have a close family relationship: (Statement #'s: 38, 59, 62.)

29. During the next week, Plaintiff A.P. met again with Defendant Rigby and notified her again, with specificity, that both D.P. and A.P. were adamant that their children were not to be tested as they had been previously.

30. Thereafter, after an exchange of several phone messages, Plaintiff A.P. was able to discuss the matter with Defendant Anderson. Plaintiff A.P. notified Defendant Anderson that Plaintiffs A.P. and D.P. did not want B.P. or N.P. tested, and that they were asserting their rights under the Protection of Pupil Rights Amendment ("PPRA," 20 U.S.C. § 1232h(b); 34 C.F.R. § 98.1 et. seq.) (commonly known as the Hatch Amendment). Plaintiff A.P. was notified by Defendant Anderson that the practices complained of had been in place for twenty years, that the self-esteem testing was required to meet Chapter I funding regulations, scores showed she had nothing to worry about insofar as it related to her children, and the tests would not be

administered again until the end of the school year. Plaintiff A.P. continued to be adamant that her children not be tested again. Upon information and belief, Defendant Anderson failed to communicate the content of this follow-up visit by Plaintiff A.P. or any other matter relative to Plaintiffs to Defendant Rigby or any of the staff at Windsor Elementary School. Regardless, Plaintiffs A.P. and D.P. took specific steps to ensure that each of their children, including B.P. and N.P., clearly understood (1) that they were not to be involved in additional psychological testing or treatment at school, (2) that this prohibition had been communicated to school officials, and (3) that refraining from such a testing or treatment was in accord with their family values and beliefs.

31. Thereafter, on or about February 4, 1994, Defendant Rigby, (without exercising either professional judgment or due care to determine whether or not D.P. or A.P. had submitted written consent for B.P. and N.P. to be re-tested), intentionally or with reckless disregard or callous indifference, violated the constitutionally and statutorily protected rights of Plaintiffs, (including parental rights, family privacy, right to refusal unwanted medical treatment) re-administered the Piers-Harris Children's Self-Concept Scale to B.P., (attached hereto as Exhibit 5, and incorporated herein by this reference), and for N.P. (attached hereto as Exhibit 6, and incorporated herein by this reference).

32. Prior to taking the Piers-Harris Children's Self-Concept Scale, Plaintiff B.P. objected to Defendant Rigby that he should not take this test on the grounds that his mother would not like him to take the test. Without making any additional inquiry of Plaintiff A.P. or any staff in the Alpine School District, Defendant Rigby assured Plaintiff B.P. that she had spoken to his mother three times and gave him assurances that it was appropriate for him to take the test. Upon information and belief, these statements were made by Defendant Rigby, intentionally, in violation of professional duties, and/or with deliberate indifference or with reckless disregard of Plaintiffs' constitutional and statutory rights regarding family association, privacy, due process, and right to refuse medical treatment. Defendant Rigby knew or should have known that such statements would have a direct impact on Plaintiff A.P.'s relationship with B.P. and the relationship of Plaintiff B.P. with A.P.

33. The statement by Defendant Rigby disrupted and directly impacted on the credibility and consistency Plaintiff A.P. had been specifically striving to maintain with her children, including Plaintiff B.P.. The statement made by Defendant Rigby also caused Plaintiff B.P. to suffer great anxiety, personal stress, and physical discomfort because he could not tell whether his mother had not told him the truth when she indicated to him the school had been told not to test him or whether Defendant Rigby was not telling the truth because of her implication that

his mother had approved of him taking the test. All of the foregoing undermined the familial relationship of Plaintiffs A.P. and B.P. Plaintiff B.P. was required to take the test by Defendant Rigby.

34. Upon information and belief, the use of the Piers-Harris Children's Self-Concept Scale tests were also used as a pre and post-test to both monitor a change of attitude among students as well as to monitor the performance of the counselors and teachers involved in federally funded Chapter I programs. The repeated use of tests was also designed to affect the behavior, emotional or attitudinal characteristics of the students, such as B.P and N.P., who were involved in the federally funded Chapter I program.

35. The Piers-Harris Children's Self-Concept Scale tests were administered for the primary purpose of having B.P. and N.P. reveal information concerning (a) mental and psychological problems potentially embarrassing to the student or his family, (b) sex behavior and attitudes, (c) illegal, anti-social, self-incriminating and demeaning behavior, and (d) critical appraisals of other individuals with whom respondents have close family relationships, all as a tool to define and evaluate the non-academic nature of the self-esteem of B.P. and N.P..

36. The testing or treatment was provided through the use of federal funds which were administered contrary to the statutory prohibitions contained in Congressional statute.

37. As a direct and proximate result of Defendants' conduct described above, all done under the color of state law, Plaintiffs have been damaged, suffering a denial of due process under the Fourteenth Amendment, PPRA, 36 C.F.R. Subtitle A, § 98.1, et. seq. denial of First Amendment rights, Plaintiffs have suffered additional family hardships, emotional distress, and an invasion of their family privacy along with undesired, negative self-labeling of Plaintiffs B.P. and N.P. and disruption of the relationship of Plaintiffs A.P. and B.P.

V.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE PROTECTION OF PUPIL RIGHTS AMENDMENT ("PPRA") 20 U.S.C. §1232h; 34 C.F.R. § 98.1 et. seq.

38. Plaintiffs incorporate by reference herein the allegations contained in paragraphs 1-36, and do further allege as outlined hereinafter.

39. The Defendants failed to exercise due care in either securing the consent of Plaintiff A.P. or D.P. (or ascertaining that Plaintiff A.P. and D.P. had consented to) the psychological testing or treatment of their children B.P. and N.P. This failure has arisen from conduct by Defendants which was either intentionally undertaken, done with deliberate indifference or in reckless disregard of the rights of the Plaintiffs, or simply not

performed with due care required by Defendants' governmental and professional position.

40. Having so failed, the Defendants intentionally ignored, (or with deliberate indifference or in reckless disregard of), Plaintiffs' statutory rights (under 20 U.S.C. § 1232(h)(b) and 34 C.F.R. § 98.1 et. seq.) which required the Defendants to obtain the consent of Plaintiff D.P. or A.P. prior to undertaking psychological testing or treatment with B.P. and N.P.

41. The Defendants cannot show a compelling state interest to justify the intrusions listed above.

42. The Defendants cannot show that their existing policies and practices were the least restrictive means of accomplishing their interests.

43. The actions of Defendants, acting under the color of state and local law, custom and usage, deprived the Plaintiffs of their statutory rights as guaranteed by PPRA, 20 U.S.C. § 1232(h)(b) and 34 C.F.R. § 98.1 et. seq., all protected by 42 U.S.C. § 1983 and § 1988.

44. The Plaintiffs have been damaged (as outlined heretofore) by reason of the illegal conduct of the Defendants in violation of federal statutes.

Count II

Violation of the Due Process Clause of the Fourteenth Amendment

45. Plaintiffs incorporate by reference herein the allegations contained in paragraphs 1-36, and do further allege as outlined hereinafter.

46. The Defendants failed to exercise due care in either securing the consent of Plaintiff A.P. or D.P. (or ascertaining that Plaintiff A.P. and D.P. had consented to) regarding the psychological testing or treatment of their children B.P. and N.P. This failure has arisen from conduct by Defendants which was either intentionally undertaken or done with deliberate indifference or in reckless disregard of the rights of the Plaintiffs.

47. Having so failed, the Defendants intentionally ignored, (or with deliberate indifference or in reckless disregard of), Plaintiffs' rights under the due process clause of the Fourteenth Amendment which required the Defendants to obtain the consent of Plaintiff D.P. or A.P. prior to undertaking psychological testing or treatment with B.P. and N.P.

48. The Defendants cannot show a compelling state interest to justify the intrusions listed above.

49. The Defendants cannot show that their existing policies and practices were the least restrictive means of accomplishing their interests.

50. The actions of Defendants, acting under the color of state and local law, custom and usage, deprived the Plaintiffs of their constitutional right to due process as required by the due

process clause of the Fourteenth Amendment, and 42 U.S.C. § 1983 and § 1988.

51. The Plaintiffs have been damaged (as outlined heretofore) by reason of the unconstitutional and illegal conduct of the Defendants.

Count III

Violation of the Incorporated Provisions of the First and Ninth Amendments Via the Fourteenth Amendment

52. Plaintiffs incorporate by reference herein the allegations contained in paragraphs 1-36, and do further allege as outlined hereinafter.

53. The Defendants failed to exercise due care in either securing the consent of Plaintiff A.P. or D.P. (or ascertaining that Plaintiff A.P. and D.P. had consented to) regarding the psychological testing or treatment of their children B.P. and N.P. This failure has arisen from conduct by Defendants which was either intentionally undertaken, done with deliberate indifference or in reckless disregard of the rights of the Plaintiffs, or simply not performed with due care required by Defendants' governmental and professional position.

54. Having so failed, the Defendants intentionally ignored, (or with deliberate indifference or in reckless disregard of), Plaintiffs' incorporated constitutional right under the First, Ninth and Fourteenth Amendments to the United States Constitution, all of which protects Plaintiffs' right to family

association, family privacy, and the parental right to exercise care and authority over the upbringing of their children, and the children's right to receive the care of their parents. The intentional representation to Plaintiff B.P. that implied Plaintiff A.P. had approved him had a direct impact on Plaintiff A.P.'s relationship with B.P. by disrupting and directly undermining the credibility and consistency Plaintiff A.P. had been striving to maintain with her children.

55. The Defendants cannot show a compelling state interest to justify the intrusions listed above.

56. The Defendants cannot show that their existing policies and practices were the least restrictive means of accomplishing their interests.

57. By these actions, Defendants have deprived the Plaintiffs of their rights under U.S. Const., Amend. I, Amend. IX, Amendment XIV, and 42 U.S.C. § 1983 and § 1988.

58. The Plaintiffs have been damaged (as outlined heretofore) by reason of the unconstitutional and illegal conduct of the Defendants.

Count IV

Right to Refuse Unwanted Medical Treatment

59. Plaintiffs incorporate by reference herein the allegations contained in paragraphs 1-36, and do further allege as outlined hereinafter.

60. The Defendants failed to exercise due care in either securing the consent of Plaintiff A.P. or D.P. (or ascertaining that Plaintiff A.P. and D.P. had consented to) regarding the psychological testing or treatment of their children B.P. and N.P. This failure has arisen from conduct by Defendants which was either intentionally undertaken, done with deliberate indifference or in reckless disregard of the rights of the Plaintiffs, or simply not performed with due care required by Defendants' governmental and professional position.

61. Having so failed, the Defendants intentionally ignored, (or with deliberate indifference or in reckless disregard of), Plaintiffs' rights under the Fourteenth Amendment to avoid unwanted medical or psychological treatment, which right protects Plaintiffs' right to family association, family privacy, and the parental right to exercise care and authority over the upbringing of their children, and the children's right to receive the care of their parents.

62. The Defendants cannot show a compelling state interest to justify the intrusions listed above.

63. The Defendants cannot show that their existing policies and practices were the least restrictive means of accomplishing their interests.

64. By these actions, Defendants have deprived the Plaintiffs of their rights under U.S. Const., Amend. I, Amend. IX, Amendment XIV, and 42 U.S.C. § 1983 and § 1988.

65. The Plaintiffs have been damaged (as outlined heretofore) by reason of the unconstitutional and illegal conduct of the Defendants.

Count V

Violation of the Substantive Due Process Provisions of the Fourteenth Amendment

66. Plaintiffs incorporate by reference herein the allegations contained in paragraphs 1-35, and do further allege as outlined hereinafter.

67. The Defendants failed to exercise due care in either securing the consent of Plaintiff A.P. or D.P. (or ascertaining that Plaintiff A.P. and D.P. had consented to) regarding the psychological testing or treatment of their children B.P. and N.P. This failure has arisen from conduct by Defendants which was either intentionally undertaken, done with deliberate indifference or in reckless disregard of the rights of the Plaintiffs, or simply not performed with due care required by Defendants' governmental and professional position.

68. Having so failed to either obtain consent or insure that written consent had been given, the Defendants intentionally ignored, (or with deliberate indifference or in reckless disregard of), Plaintiffs' substantive due process and liberty rights protected by the Fourteenth Amendment to the United States Constitution, all of which protects Plaintiffs' right to family association, family privacy, family privacy and the parental

right to exercise care and authority over the upbringing of their children, and the children's right to receive the care their parents desire to give them.

69. Upon information and belief, Defendants' conduct was undertaken intentionally by Defendant Rigby, in violation of professional duties, and/or with deliberate indifference or with reckless disregard of Plaintiffs' constitutional and statutory rights regarding family association, privacy, due process, and right to refuse medical treatment. In particular, the misrepresentation by Defendant Rigby to Plaintiff B.P. of the position of Plaintiff A.P. disrupted and directly impacted on the credibility and consistency Plaintiff A.P. had been striving to maintain with her children. The statement made by Defendant Rigby also caused Plaintiff B.P. to suffer great anxiety, personal stress, and physical discomfort because he could not tell whether his mother had not told him the truth when she indicated to him the school had been told not to test him or whether Defendant Rigby was not telling the truth because of her implication that his mother had approved of him taking the test. This communication--intentionally made--deprived both of the Plaintiffs of an aspect of their private, familial relationship in an arbitrary and capricious manner, all without due process of law.

70. The Defendants cannot show a compelling state interest to justify the intrusions listed above.

71. The Defendants cannot show that their existing policies and practices were the least restrictive means of accomplishing their interests.

72. By these actions, Defendants have deprived the Plaintiffs of their rights under U.S. Const., Amendment XIV, and 42 U.S.C. § 1983 and § 1988.

73. The Plaintiffs have been damaged (as outlined heretofore) by reason of the unconstitutional and illegal conduct of the Defendants.

REQUESTS FOR RELIEF

74. Plaintiffs seek an award of nominal and general damages for Plaintiffs A.P., D.P., B.P., and N.P. by reason of the injuries suffered by reason of the actions of the Defendants.

75. Plaintiffs are entitled to their costs, including reasonable attorney's fees as provided by 42 U.S.C. § 1988.

WHEREFORE PLAINTIFF PRAYS:

76. That the Court award nominal or general damages to D.P., A.P., B.P. and N.P. in the amount to be shown at trial against Defendant Alpine School District and, if merited, against each other Defendant in their personal capacity.

77. That Plaintiffs be awarded their costs, including reasonable attorney's fees.

78. That the Court grant such further and general relief as to which the Plaintiffs may be entitled.

Dated November 23, 1994.

HILTON & STEED, P.C.

By:

Matthew Hilton
(Cooperating Attorneys for
The Rutherford Institute)

ALPINE SCHOOL DISTRICT

575 North 100 East, American Fork, Utah 84003 (801) 756-8424

Dr. Luana Searle, Assistant Superintendent ◊ K-6 Schools

September 1992

Dear Parents of _____

The Chapter I program this year is being offered for selected third grade students in the area of reading. It is designed to provide students with daily hands-on reading experiences. Those children selected to participate will leave their classroom for 30 minutes per day and study under the direction of the Chapter I teacher. The class will include phonics lessons, drill on most used sight words, prereading computer lessons that motivate interest and teach vocabulary and study skills, postreading computer lessons that teach literal, critical, and creative reading comprehension skills, and reading in children's literature books. This is a new approach that uses the philosophy that "we learn best by doing." A wide variety of outstanding books will be made available to the students and outside reading will be expected of them. The project is financed entirely with Chapter I Federal funds.

The program includes pre and post testing so that we can measure your child's progress. Results of these tests will be shared with you during regularly scheduled parent conferences.

Your child has been recommended by his/her classroom teacher to participate with us. If you would like him/her to have this opportunity, sign the permission slip below and return it to school.

Please call if you have any questions. The Chapter I phone number is: _____

Sincerely,

Chapter I Staff

Please return this slip to school tomorrow -

I do ____ do not ____ desire to have my child _____participate in the program.

_____ _____

Date Parent Signature

EXHIBIT 1

ALPINE SCHOOL DISTRICT

575 North 100 East, American Fork, Utah 84003 (801) 756-8424

Dr. Luana Searle, Assistant Superintendent ◊ K-6 Schools

September 1992

To the Parents of

Our school is very fortunate to have the tutoring, Chapter I Reading class available for selected 1st and 2nd grade children. A select group of children are given the opportunity to participate.

Your child is eligible to participate this year. This means that he/she would leave the regular classroom for thirty minutes each day and go to the tutoring room for reading instruction. He/she would be taught by a tutor from the 5th and 6th grade, supervised by certified personnel. Reading and self-concept skills will be reinforced.

Reading tests and evaluations will be given your child. The results of such testing will be shared with you at the parent conferences held during the year. This program is supported entirely with Federal funds known as "Chapter I."

Please complete the form below and return it to school tomorrow so we can know if you desire to have your child participate. If you have questions, please call me at 227-8785

Sincerely,

Miss Atkin

Chapter I Staff

EXHIBIT 2

"THE WAY I FEEL ABOUT MYSELF"

The Piers-Harris Children's Self-Concept Scale

Ellen V. Piers, Ph.D. and Dale B. Harris, Ph.D.

Published by
WPS WESTERN PSYCHOLOGICAL SERVICES
Publishers and Distributors
12031 Wilshire Boulevard
Los Angeles, California 90025-1251

Name: [redacted] Today's Date _____

Age. _____ Sex (circle one): Girl (Boy) Grade: 3rd

School Windsor-Chapter I Teacher's Name (optional): Ruby/Soerren-I

Fall 1993

Directions: Here is a set of statements that tell how some people feel about themselves. Read each statement and decide whether or not it describes the way you feel about yourself. If it is *true or mostly true* for you, circle the word "yes" next to the statement. If it is *false or mostly false* for you, circle the word "no." Answer every question, even if some are hard to decide. Do not circle both "yes" and "no" for the same statement.

Remember that there are no right or wrong answers. Only you can tell us how you feel about yourself, so we hope you will mark the way you really feel inside.

TOTAL SCORE: Raw Score 75 Percentile _____ Stanine _____

CLUSTERS: I 15 II 17 III 12 IV 14 V 10 VI 10

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W-180A

EXHIBIT 4

The Piers-Harris Children's Self-Concept Scale

PROFILE FORM

Ellen V. Piers, Ph.D. and Dale B. Harris, Ph.D.

Published by

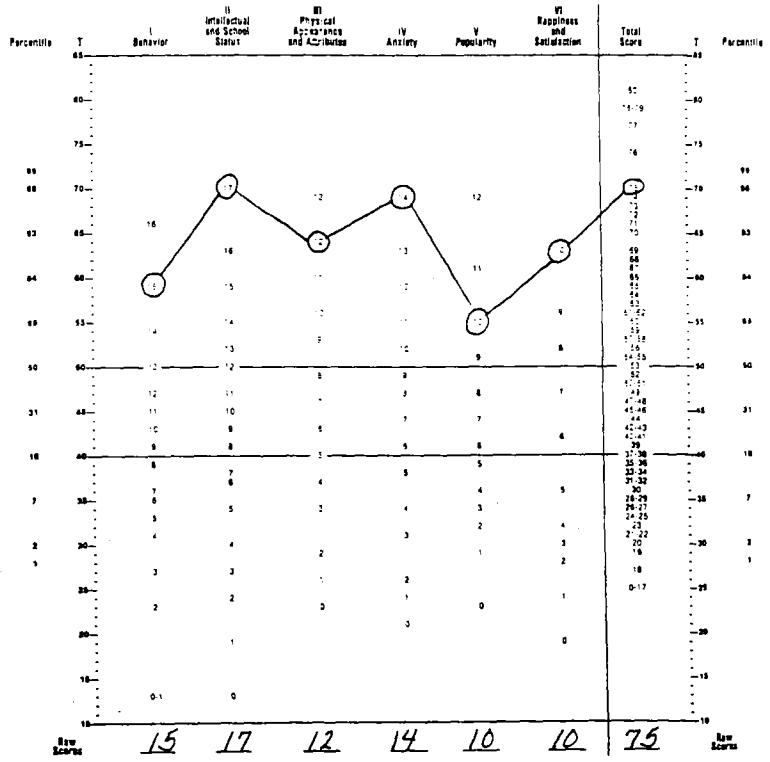
WPS WESTERN PSYCHOLOGICAL SERVICES
Publishers and Distributors
12031 Wilshire Boulevard
Los Angeles, California 90025-1251

Name: [redacted] Today's Date: _____

Age: _____ Sex (circle one): Girl (Boy) Grade: 2nd

School: Windsor - Chapter I Teacher's Name (optional): Rigby / Sorensen I

Fall 1993



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A-180G

1. My classmates make fun of me ..... yes (no)
2. I am a happy person ..... (yes) no
3. It is hard for me to make friends ..... yes (no)
4. I am often sad ..... yes (no)
5. I am smart ..... (yes) no
6. I am shy ..... yes (no)
7. I get nervous when the teacher calls on me ..... yes (no)
8. My looks bother me ..... yes (no)
9. When I grow up, I will be an important person ..... (yes) no
10. I get worried when we have tests in school ..... yes (no)
11. I am unpopular ..... yes (no)
12. I am well behaved in school ..... (yes) no
13. It is usually my fault when something goes wrong ..... yes (no)
14. I cause trouble to my family ..... yes (no)
15. I am strong ..... (yes) no
16. I have good ideas ..... (yes) no
17. I am an important member of my family ..... (yes) no
18. I usually want my own way ..... yes (no)
19. I am good at making things with my hands ..... (yes) no
20. I give up easily ..... (yes) no

21. I am good in my school work ..... (yes)
22. I do many bad things ..... yes
23. I can draw well ..... (yes)
24. I am good in music ..... (yes)
25. I behave badly at home ..... yes
26. I am slow in finishing my school work ..... yes (
27. I am an important member of my class ..... (yes)
28. I am nervous ..... yes
29. I have pretty eyes ..... (yes)
30. I can give a good report in front of the class ..... (yes)
31. In school I am a dreamer ..... yes (
32. I pick on my brother(s) and sister(s) ..... yes (
33. My friends like my ideas ..... (yes)
34. I often get into trouble ..... yes (
35. I am obedient at home ..... (yes)
36. I am lucky ..... (yes)
37. I worry a lot ..... yes (
38. My parents expect too much of me ..... yes (
39. I like being the way I am ..... (yes)
40. I feel left out of things ..... yes (

41. I have nice hair ..... yes no
42. I often volunteer in school ..... yes no
43. I wish I were different ..... yes no
44. I sleep well at night ..... yes no
45. I hate school ..... yes no
46. I am among the last to be chosen for games ..... yes no
47. I am sick a lot ..... yes no
48. I am often mean to other people ..... yes no
49. My classmates in school think I have good ideas ..... yes no
50. I am unhappy ..... yes no
51. I have many friends ..... yes no
52. I am cheerful ..... yes no
53. I am dumb about most things ..... yes no
54. I am good-looking ..... yes no
55. I have lots of pep ..... yes no
56. I get into a lot of fights ..... yes no
57. I am popular with boys ..... yes no
58. People pick on me ..... yes no
59. My family is disappointed in me ..... yes no
60. I have a pleasant face ..... yes no
61. When I try to make something, everything seems to go wrong ..... yes
62. I am picked on at home ..... yes
63. I am a leader in games and sports ..... yes
64. I am clumsy ..... yes
65. In games and sports, I watch instead of play ..... yes
66. I forget what I learn ..... yes
67. I am easy to get along with ..... yes
68. I lose my temper easily ..... yes
69. I am popular with girls ..... yes
70. I am a good reader ..... yes
71. I would rather work alone than with a group ..... yes
72. I like my brother (sister) ..... yes
73. I have a good figure ..... yes
74. I am often afraid ..... yes
75. I am always dropping or breaking things ..... yes
76. I can be trusted ..... yes
77. I am different from other people ..... yes
78. I think bad thoughts ..... yes
79. I cry easily ..... yes
80. I am a good person ..... yes

For examiner use only

	1–20	+ 21–40	+ 41–60	+ 61–80	= 1–80 Total
I	3	6	4	2	15
II	6	6	3	2	17
III	3	2	5	2	12
IV	6	4	3	2	14
V	3	1	4	2	10
VI	2	2	4	2	10
Total Score	23	21	22	12	78

Mr. HORN. Thank you very much. Let me just ask a couple of questions and then we'll yield to each side, alternating.

If we're to write into this bill the parental consent procedure of an option to decline by mail and to assume consent if no written declination were received in a reasonable time, would that be legally sufficient, in your judgment? I'd like to hear the answers of both of you to the question.

Mr. HILTON. I think the issue raised by Senator Grassley previously, where he indicated he wanted to make sure there was no question and no burden on the parent to prove that they had gotten the notice—occasionally, you miss things in the mail.

I think the judgment call to be made here is for Congress to make that judgment call. You're broadening out of the school arena. I feel strongly that consent can be obtained in the school arena. There are other issues that may ameliorate against obtaining that consent on a broad basis.

At a minimum, we ought to have, at least for the proposal 3 which has been discussed today by Dr. Johnston, I would favor the written support. If you provided enforcement rights on these other issues, I think it would go a long way to making that a compromise that could be lived with.

My preference, obviously, would be the written, but I recognize, I don't think that is legally mandated at this point in our jurisprudence outside of the school setting.

Mr. HORN. Dr. Johnston.

Mr. JOHNSTON. Yes. Well, obviously, I can't speak as a lawyer, since I'm not one, but the intent of the procedure—which, incidentally, we've been doing since 1991 in our surveys of 8th and 10th grade students—is to be sure that every parent is notified well in advance of the actual survey that the survey will take place, what it's about, and given the opportunity to decline participation of their child at no cost to them, and at really very, very little difficulty to them. It's either sending back a written card that's prestamped and pre-addressed or picking up the phone and making a local phone call to the school to a designated person and simply saying they don't want their child to be in that survey.

We've tried to create the situation so there is a minimum of difficulty, embarrassment, or any kind of obstacle to a parent saying no, they'd just as soon their child not be in the study. It seems to me that schools keep pretty good, up to date records of the addresses and names of the parents or guardians of the children they serve, so I think it would be one of those things that 99.9 percent of the parents would be actively and accurately notified.

Under the proposal that I make, and the one that we actually have had a good opportunity to pretest, we get very low proportions who actually decline but, as I said, in a different part of the study where we carry out a full-scale, active parental consent procedure, we find that only 1 or 2 percent, in the end, decline, of all the parents that are contacted.

Mr. HORN. Yes, I noticed that figure. You said 55 percent didn't answer the first mail request and then, ultimately, 1 or 2 percent decline?

Mr. JOHNSTON. Right.

Mr. HORN. But the question is, if you notify them—and perhaps it ought to be by certified mail. That obviously adds a cost to the survey.

If you did send it certified mail, you give them advance notification, and that slip and who signs it would prove whether the parents received it. Would that be adequate, in either of your judgments, to assume consent if no written declination were received—let's say you had a return envelope inside, and a form—within 2 weeks after receipt?

Mr. JOHNSTON. That certainly could be done. It's not inexpensive, I believe. I don't know the exact cost.

Mr. HORN. Well, when you add up all the telephone calls and the time on following up, it's one way to say, "Did they receive it or didn't they?" Now, parents could be traveling.

Mr. JOHNSTON. Oh, it's definitely less expensive than telephone contact with all the parents.

Mr. HORN. Right.

Mr. JOHNSTON. But when you think of some of these studies being 50 or 100 thousand people, even something that adds $1, adds $100,000 to a study of that size, per year.

The other thing that I think about—because when we do followups of high school seniors—and we follow them into their late 30's by mail quite successfully—we have used certified mail over the years, and we get a lot of complaints because many people have to go to the post office.

They're not home when the attempt for delivery is made there, they get left a slip, and they have to go to the post office. Then they're upset because they were hoping at least it was the new pants they ordered from a catalog or something, and here it's a questionnaire, instead, with a low payment.

So, in fact, we're now moving away from certified mail for that reason, and I could imagine parents having a similar response. In many of them, both parents work or the only parent works. They're not home, and so they have to—in essence, it becomes more of a burden for them to have to go pick it up at the post office rather than to simply receive a first class letter. I do think first class letters make it to just about everyone.

Mr. HORN. Well, you also have the problem of does big sister sign the slip for little Johnny and it goes back and the teacher files it or the surveys file it, and you really don't have a signature to compare with that.

Mr. HILTON. I do think, though, your effort at certified approach does give a higher degree of assurance that, in fact, notification is given. You know, in the abstract, to try to balance what is the compelling interest, we're here dealing with drug usage and other things that Justice O'Connor, at least, and Smith, thought was compelling in and of itself. We're balancing out. At least ensuring they've got the notification would go a long way.

The State has interfered on child labor laws against parents' wishes, and other things. It's not an absolute standard. But I would surely support certified mail as a way to get over that extra step to do the best you can to get notification.

Mr. JOHNSTON. Mr. Chairman, you may have alluded to this, but if someone else in the home signs it—I mean anybody who is there

can sign it—then that may undercut the purpose, which is to have the parents show that they received it.

Mr. HORN. Sure. The ranking member, Mrs. Maloney of New York.

Mrs. MALONEY. Thank you very much. The way Title IV is drafted, it could prevent a local police department receiving Federal funds from interviewing a minor about crimes without the consent of their parents. Is that the intent of the legislation? I guess the chairman can answer, too.

In other words, I think that my colleague raised a very important point, that of interviewing young children that may have experienced abuse of some sort, or the example that I gave, of a police department interviewing a minor about crimes. The way this is drafted, this would preclude them from doing it.

Mr. HILTON. If I could address that issue by referring you to my written testimony, in the Utah legislation, we were concerned about the very question.

On page 3, we put in explicit protections, except in response—this is dealing in the school setting, of course, same idea—to a situation which a school employee reasonably believes to be an emergency, or as authorized under our State laws dealing with child abuse reporting, or by order of the court—and we have certain Juvenile Court rules and State rules that allow that kind of questioning at all times—disclosure to a parent or guardian must be given so many weeks before informed consent is allowed.

All that has to be done—and I suggest this in my testimony—is putting in an amendment saying nothing in this legislation would, in fact, prohibit some of the very things you're talking about and what I understand we have consensus on that this was never intended to prevent or block happening.

We've worked with it now for 1½ years in a practical sense and your very concern is one that we had. We've had to have teacher training all over our State to make sure that the record was clear we were not trying to infringe on any child abuse reporting or interfere with law enforcement at all.

Mrs. MALONEY. What about, say, a State receiving welfare funds through a block grant? Would it prevent the State officials from asking a minor receiving welfare benefits about other family members living together in the same household without the consent of their parents? Is that the intent? Would that not bar officials from asking such questions, the way the language is drafted?

Mr. HILTON. Unless you're implying that we have illegal conduct going on in the home and, therefore, it would be barred by Section 4 in that sense. If we have a protection that says a minor's household income, other than information required by law to determine eligibility for participation or assistance, if that caveat was applied to all of the categories, then no.

If it was just intended to apply to income then, arguably, yes, but let's make that caveat apply to everything if that would make the law easier to administer and achieve its purpose of what was intended.

Mrs. MALONEY. Can you give us some examples of agencies that required minors to submit to a survey and asked for information concerning anti-social or demeaning behavior?

Mr. HILTON. The example I was giving you at the beginning was coming out of the educational setting. That's where I've spent most of my time. I'm not as well-versed as Dr. Johnston, at all, on that type of a survey.

Mrs. MALONEY. Could you give us some examples of some of these——

Mr. HORN. Dr. Johnston, did you want to comment on that?

Mr. JOHNSTON. Well, to tell you the truth, when I originally read this, I read it as applying to school surveys but, in fact, that's not a qualification in this. I guess I generalized from the original Grassley amendment to the school legislation.

I don't even know if he meant and had intended something beyond schools, but I think the point you make is a very relevant one, that there are probably many other agencies that most of us would agree legitimately ask these questions as part of their statutory authority and intent and that we wouldn't want to put them in a bind by an overly broad statement of intent.

Mr. HILTON. But the overall question is, isn't it, that you can get around that by having their consent. Senator Grassley was very clear, if a family wants to have their privacy invaded, and consent, that's great. All he's trying to do is make sure they have the consent.

Mr. JOHNSTON. Do you think he meant to include say, police asking a child about child abuse and so forth?

Mr. HILTON. No. The other provisions that I've submitted, under Utah, are clearly designed to exempt that.

Mrs. MALONEY. I'm aware of educational surveys, as a product of public schools. I was asked them all the time when I was in public school. But I'm unaware of other federally funded surveys which require minors to participate.

Can you identify surveys you are concerned about? I think it would be helpful if we got an understanding of how many surveys are going into the home, are going into the children, not just in the educational system. If you know of any surveys that——

Mr. JOHNSTON. My impression is that there are extremely few, certainly national surveys, that require anything. That is, they're all voluntary and the child can choose not to be in the survey, and that's explicitly explained in procedures enacted, and we do the same thing ourselves.

I think probably the most egregious examples that one might dredge up would come from local surveys maybe done by local colleges or by people in the school system and so forth, who simply don't think about these things, and human subjects' protection isn't even a phrase in their lexicon.

Mr. HORN. It's supposed to be in colleges and universities, maybe not in high schools. Is that your experience, that your colleagues in public and private colleges and universities really don't follow a human subjects review? Because it's mandatory, in most research protocol.

Mr. JOHNSTON. Yes, I think most academic work goes through so many procedures that children are properly protected.

Mrs. MALONEY. The background memo for this hearing from Chairman Horn, suggests that some surveys do not require paren-

tal consent, yet minority counsel to the committee, in checking with the agencies that do these surveys, was told they do get consent.

Do you know of any cases in these surveys where minors have been asked questions about sexual behavior without parental consent?

Mr. JOHNSTON. I think there are some examples of studies which basically do whatever the school requires rather than following a single guideline about parental consent. I believe the youth risk behavior survey is such an example.

So, in some schools, they may be required to do active, in some schools passive; in some schools, the school basically acts in loco parentis. So that would be an example, I think. And those surveys——

Mr. HORN. And that survey is sponsored by whom, now, and funded?

Mr. JOHNSTON. I'm sorry. That's a CDC——

Mr. HORN. Center for Disease Control in Atlanta?

Mr. JOHNSTON. Correct.

Mr. HORN. OK. And so what you're saying is they follow the local rules on parental consent?

Mr. JOHNSTON. Yes. So, for example, what I proposed as an alternative would be a change for that study, which would mean that, under all circumstances, parents would get advance notification and an opportunity to decline.

Mrs. MALONEY. Counsel to the committee informs me that youth risk surveys do get parental consent now.

Mr. JOHNSTON. As I say, what I understand from the people who direct it is that they have different procedures, depending on the school, and I should also note that they encourage States to do their own State assessments, so there are other variations. I don't know if anyone is here from CDC or not.

Mr. HILTON. In our legislative hearings this past year, we had reports on drug testing in our State that were done, they thought, to comply with Federal funding mandates, and were much broader than was required to meet the Federal needs, although it was done by State personnel and State staff to verify the nature of the drug problem and get the funding.

That's a variation on the theme. It's not a federally mandated survey, but they were surveys that were quite intrusive, that we found out in our hearings really didn't have to be done.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. HORN. Thank you. The representative from Massachusetts, Mr. Blute.

Mr. BLUTE. Thank you very much, Mr. Chairman. I want to commend you for having this hearing and the panel for their very good testimony.

I apologize for being late and I hope I'm not going over turf that has already been chewed up here; but I'm interested in the issue of parental objections and find it interesting, and I wanted to ask Dr. Johnston, does the parental objection rate differ with the content of the study being performed? Are parents more likely to object to a survey on sex or drugs or both, or do those jump off the charts, or are there other issues that tend to result in higher rates of parental objection?

Mr. JOHNSTON. I wish I had more empirical data with which to answer that. Not many studies do a full-scale active parental consent, for the reasons I mentioned in my testimony, and so we don't know exactly.

The only one I know is one that we have done, where we've followed up a nationally representative sample of young people about 15 years of age. We notified the parents of the content of the survey, which includes drugs and alcohol but not sexual behavior, and we get between 1 and 2 percent, eventually, who decline their children's participation.

That's fairly sensitive information. I suspect that if it was explicit for sexual behavior in the questionnaire, it would be a bit higher, but probably not dramatically so.

Mr. BLUTE. Let me just say that I agree with you about the problems associated with doing the mail that way. I certainly, as just an average person, hate it when I have to go down to the Post Office for one of those and find out that it's something that is not that important directly to me, and I took all that time, so I can see the problematic nature of that, and so it is a difficult process.

I appreciate your testimony, and we look forward to working with you and the chairman on crafting this bill. Thank you very much, Mr. Chairman.

Mr. HORN. Thank you very much. Let me pursue a couple of questions here. I understand the National Association of School Psychologists has suggested the degree of formality of the parents' consent should be driven by how sensitive or controversial the survey is and an analysis or evaluation would figure that out, presumably.

For example, in the case of intervention decisions involving individual children, written consent would be mandatory; where personal information is gathered, verbal consent should be provided; and for shaping and defining a proposed program, parents can be informed and invited to participate.

Do we need to consider this hierarchy of consent forms here or would one form, such as the decline-by-mail option, be preferable? What's your reaction to that, Dr. Johnston?

Mr. JOHNSTON. Well, I think that, almost regardless of content, that the, what I call model 3 or the first class mail, would be adequate as the most extreme. I do think that the case could be made that there's a whole body of research about really non-sensitive topics that probably doesn't require even that.

Whether this committee is going to be able to put the wording to that, to make the distinction, I'm not sure. It's a hard distinction to make, because one person's sensitive topic is not another one's.

Mr. HORN. Right.

Mr. JOHNSTON. I think there is a fairly comprehensive list in the current wording about what constitutes sensitive and, despite the broad statement of some of those terms, probably, there would be some consensus around that as being the domain, fairly broadly defined, of sensitive material.

Mr. HORN. Dr. Hilton.

Mr. HILTON. I would simply, drawing on my experience both in religious liberty, civil rights work, as well as having served as

counsel to one of our registered Indian tribes, it's extremely difficult to have outsiders decide what is sensitive and what is not.

I would strongly urge you to consider a procedural mechanism, a general procedural mechanism, rather than trying to define and have varying standards based on a vague definition of what could be offensive or not.

Mr. HORN. Let's take that example of an Indian tribe. What you're talking about, of course, are the multicultural differences that occur in our society.

The Long Beach schools and the Los Angeles schools are a part of my congressional district. There are 70 to 80 foreign languages spoken in the home. That doesn't happen in most States of this Nation, except perhaps New York.

That obviously creates a different climate of values as well as communication between these students and, certainly, parents. Most of the parents are still speaking the language of the old country. The children are learning English as well as any of the rest of us. So that creates quite a problem.

Mr. JOHNSTON. If I could add, Mr. Chairman, the one consideration that I think you would all want to take into account is cost. A sweeping requirement will add probably tens of millions of dollars to what goes on in our schools throughout the country, so one has to weigh, is it worth adding those costs to government at one level or another in order to accomplish this objective?

It seems to me where you could make the case that maybe most of the work that's done isn't that sensitive and really doesn't require that cost. It doesn't sound like a lot, because maybe it's $1 or $2 per person, but when you do that—and we have a population of 15 or 20 million minors in school—you start to multiply numbers like that times $1 or $2, as Ev Dirksen once said, "Pretty soon you're talking about real money."

Mr. HORN. Right. Well, we have another expert panel coming up, and they'll know the answers to a lot of these questions, which have been around since the New Deal. The survey questions of the Federal Government had to be reviewed by the Office of Management and Budget or the old Bureau of the Budget. So we'll hear from them shortly.

Now, several respondent groups that we've heard from—teachers, counselors, administrators—warned against gagging or unduly restricting their members' work to the detriment of the youth involved, if the bill were passed as written.

What has been your experience in today's situation where there are already some written consent surveys and State and Federal controls in place? Would you say that's gagging research? How do you look on that? Dr. Johnston, I'll let you start.

Mr. JOHNSTON. I'm sorry. I had trouble hearing all of what you said. In States where they're already using active parental consent?

Mr. HORN. Well, these are from just general groups in the United States that represent various professionals. I mentioned earlier the school psychologists, but there are a lot of others. Everybody's organized in this country.

Mr. JOHNSTON. Sure.

Mr. HORN. They are worried about gagging and unduly restricting the research that goes on by their members, and I'm just curi-

ous if you have seen much gagging one way or the other by the existing State, local school district rules.

Mr. JOHNSTON. I'm not sure I'm answering your question. There are a lot of groups that have researchers in them, and who depend on research, that are quite concerned about the legislation as it currently exists. I think word of the legislation got out rather late.

In fact, the original Grassley amendment on the education legislation I think didn't get out at all. I mean, it just happened before anybody had a chance to say, "Wait a minute, there are some problems here."

Mr. HORN. Well, I can appreciate that. That's why we're holding this hearing.

Mr. JOHNSTON. Yes. We appreciate that.

Mr. HORN. And we want the response, because I was a university president when the Buckley amendment was passed, and some of the things that have occurred as a result of the Buckley amendment boggle the mind.

The Department of Education, in Pennsylvania State University, said masters' theses were subject to the Buckley amendment, which is so ludicrous that I can't believe it, since you're supposed to take your thesis and put it in the library where it's open to anybody who would like to read it, and for anyone to check for plagiarism or anything else.

So you have the great irony where a master's student, after submitting his master's thesis to a faculty committee and the thesis is approved, can deny access to it in the university library under the Buckley amendment. That's absurd. Congress certainly didn't intend that. And yet, some eager beaver has stated that.

Mr. HILTON. I think it's important, in all deference to professional colleagues—and I hold a degree that dealt in research and other matters, as well. There are many parents, as expressed by Senator Grassley and others, who are deeply concerned about intrusion in the family.

At least in our State, we have worked out, with additional technical refinements, balances where those involved in research and administration feel comfortable with it. Our amended version of the legislation was endorsed by our State Superintendent Association. We had extensive testimony from psychologists and counselors throughout the year on other related matters.

It is a balancing act that we're involved in here, and let's make sure we don't forget the parents who speak out the least, whether they have it mailed to them or have to have it signed. Either way, let's not forget the parents who really are not heard here very often. It's their privacy and their autonomy that we're trying to protect.

Mr. HORN. Representative Maloney.

Mrs. MALONEY. I want to thank both panelists. Just one concluding question. How do you protect the privacy of this information once you compile it in your study? A lot of it is tremendously personal, could be damaging to a family. How do you protect it?

Mr. JOHNSTON. The fact is, the great majority of such surveys are anonymous, so the individual is not identified.

Mrs. MALONEY. But many are not.

Mr. JOHNSTON. Well, some are not, and I should add that includes our own study, because we take a sub-sample of the youngsters who we survey in school and follow them up for years afterward.

We have very elaborate protection procedures, one of which is that when we get identifying information, we get it on a separate document which cannot be—even if you were standing there holding them both, you wouldn't know that the two documents go together. They have a randomly matched 10-digit number that's printed on them, a different number on each one. Unless you have the computer tape, you don't know that those two go together.

We have our own people always in control of the documentation. We don't turn it over to school personnel. Those materials are sent to different locations, put on computer, and kept under lock and key or in bank vaults, and, in our case, we're able to get, because we deal with drug use, a special grant of confidentiality from the Justice Department that precludes our being forced to provide identifying information or results from an individual in any Federal, State, local criminal or other type of proceeding. So basically, it's a very sweeping kind of protection.

That protection may not exist in all subject areas, but we go to great lengths to protect our subjects.

Mrs. MALONEY. Is there any punishment in the law for people who may violate this protection?

Mr. JOHNSTON. Not that I know of, no.

Mr. HILTON. My observation would be more directed on the different ways on a State level you can remedy that, other than concurring with what Dr. Johnston said, that is the general rule and, hopefully, many times, studies don't identify the people to that detail.

Your observation about possible protection or punishment for disclosure, I think, could be addressed by ensuring you do have a private right of enforcement for violation of rights, as we discussed earlier.

Mrs. MALONEY. Thank you very much.

Mr. HORN. We thank you both for coming. You've both been very helpful. Your written material was very succinct and mentioned the arguments in a very effective way, so thank you for coming. We'll be sending you some additional questions. We would appreciate if you have the time to respond to them, because we want to work it all into the mix before the committee considers the markup of the bill.

Mr. JOHNSTON. Thank you very much.

Mr. HILTON. Thank you.

Mr. HORN. On our next and last panel, we have Ms. Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs, and Dr. William Butz, the Associate Director, Demographic Programs, Bureau of the Census.

If you both will stand and raise your right hand.

[Witnesses sworn.]

Mr. HORN. Let the record show both witnesses affirmed.

Ms. Katzen, we're delighted to have you here. We mentioned earlier the old Bureau of the Budget that was your predecessor office

way back in the New Deal. As I remember, the Bureau of the Budget had to clear every survey that involved X number of people.

STATEMENTS OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET; AND WILLIAM P. BUTZ, ASSOCIATE DIRECTOR FOR DEMOGRAPHIC PROGRAMS, BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE

Ms. KATZEN. The Federal Reports Act gave that authority to them and I am pleased to see that both Houses of Congress have already passed, now, the Paperwork Reduction Act, which continues that same authority for my office.

Mr. HORN. So the surveys will be succinct surveys after the Paper Reduction Act?

Ms. KATZEN. Tight as can be.

Mr. HORN. Good. Please proceed.

Ms. KATZEN. Thank you very much, Mr. Chairman and members of the subcommittee. I'm pleased to be here to discuss Title IV of H.R. 11 with you this morning. By now, some of the things that I'll be saying are cumulative of comments, you've already heard, but I think it is important to make sure that the record is clear.

Title IV of H.R. 11 is intended to protect the privacy of families by requiring written parental consent for certain types of information asked of minors in federally funded surveys, analyses, or evaluations. However, as is often the case, one size doesn't fit all, and the broad provisions in Title IV may have unintended consequences, in some cases placing the children who are expected to be protected at risk and potentially jeopardizing important areas of Federal research on the risks faced by youth in America today.

Before focusing on the specific issues, I'd like to stress that the administration recognizes and endorses the legitimate role of parental involvement in research activities involving children. The standard practice in most social science research today requires some form of parental consent before interviewing minors, as it should. The majority of the large research organizations have institutional review boards which generally require that surveys of minors have parental consent. But it is important to understand that there are at least two forms of parental consent—passive consent and active or written consent.

Under a passive consent policy, the researcher will send a note home and ask the parents to indicate any objection to the child's participation. If no response is received, parental consent is assumed. This method has been employed in large-scale research efforts, particularly in school settings.

On the other hand, a written consent policy requires an affirmative expression of permission for a child to participate. Written consent works well when the parent or child is highly motivated to participate in an activity. But when a parent has no strong views one way or the other, the consent form is often perceived as mindless paperwork, and may be ignored.

I can tell you, from my own experience as the mother of a child, papers that come home in the backpack may or may not get the attention that they deserve.

Researchers, however, will tell us that a shift from passive to written consent will introduce a burden on the individuals that is sufficient to dramatically lower response rates to the point that it may effectively invalidate the research being conducted.

There are several critical research efforts underway now in the area of adolescent high-risk behavior, such as teen pregnancy and drug abuse. Our ability to approach these issues sensibly and to assess appropriate Federal intervention, if any, depends upon our understanding of the extent of the problem and the dynamics that underlie teen decisionmaking and conduct.

Valid research is essential to that understanding, and imposing written consent may jeopardize our ability to conduct valid research and, hence, our ability to address these problems which all of society is aware of.

For present purposes, I'd like to briefly identify three other situations where the requirement for written consent may be counterproductive. One involves the safety of the minor. Written parental consent presents a unique set of problems and barriers in research on troubled families and children and could potentially put children at risk.

The Department of Health and Human Services conducts research on family violence and abuse, including situations where children are removed from the home due to an abusive situation or ultimately placed in foster care.

In these situations, it may not be safe, it may not be feasible, and it probably is not wise to contact the parents for written permission to interview the children. What does parental consent mean when parents no longer accept their responsibility to protect the child?

Children away from home is a second circumstance. Again, written parental consent could prove an insurmountable barrier to survey and research efforts involving runaway and homeless youth. HHS has conducted numerous valuable studies examining youth behavior and psychological status that have been used to address the complicated problems of these at-risk teens.

While runaway and homeless shelters often notify parents, the administrative burden and expense of obtaining a written consent form would effectively eliminate research of this kind and would be incompatible with the best interests of the child.

The third situation is an area which was discussed extensively this morning, on law enforcement activities. Written parental consent could impede routine law enforcement investigations where the children are the victims, such as child molestation, child pornography, or crimes committed by the parents or guardians whose consent would be requested in writing.

Taken literally, this bill could require parental written consent whenever someone questions a child who is a victim of abuse or neglect by a parent or guardian. At the very least, parental consent should not be required in any evaluation or other activity related to law enforcement or child protective services.

I would also like to briefly note that many of these surveys are conducted anonymously. In other words, there is no personal identifier and the identity of both the minor and the family cannot be

ascertained when the data is put together. In those circumstances, it is unclear what function would be served by written consent.

I commend you for undertaking these hearings. These are very important and often contentious issues. There are sensitive values at stake.

I know that you are wrestling with these issues, as are we, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Katzen follows:]

PREPARED STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Good morning, Mr. Chairman and Members of the Subcommittee. I am pleased to be here to discuss Title IV of H.R. 11, "The Family Reinforcement Act."

Title IV of H.R. 11 is intended to protect the privacy of families by requiring written parental consent for certain types of information asked of minors in Federally funded surveys, analyses or evaluations. However, as is often the case, one size doesn't fit all, and the broad provisions in Title IV may have unintended consequences—in some cases placing children at risk, and potentially jeopardizing important areas of Federal research on the risks faced by youth in America today.

Title IV resembles Section 1017 of the 1994 Goals 2000: Educate America Act. While the Department of Education had been subject to a written parental consent requirement for a number of years, before last year the requirement covered only a limited number of instances involving psychiatric or psychological examinations that primarily asked questions perceived as sensitive. The language from Goals 2000 expanded the types of surveys covered, and imposed written consent even when a single question was perceived as sensitive. That language was not endorsed by the Administration; indeed, the Department objected to its expanded scope.

The expansive applicability that was objectionable in the Goals 2000 law is magnified in Title IV, which extends the written parental consent requirement to any Federal agency or federally funded entity. In fact, if construed in light of the Civil Rights Restoration Act, then any survey, analysis or evaluation conducted by any recipient of Federal funds, including States, cities, research institutes and universities, could be subject to this law.

Before focusing on specific issues, let me stress that the Administration recognizes and endorses the legitimate role of parental involvement in research activities. Moreover, standard practice in most social science research today requires some form of parental consent before interviewing minors. The majority of the large research organizations have Institutional Review Boards which generally require that surveys of minors have parental consent. We also agree that two of the categories of information identified in Title IV—political affiliation and religious beliefs—would be inappropriate to ask of either adults or children. In fact, the Privacy Act bars Federal agencies from inquiring about these subjects without consent.

It is important to understand that there are two forms of parental consent: passive consent, and active or written consent.[1] Under a passive consent policy, the researcher sends a note home and asks the parent to indicate any objection to the child's participation. If no response is received, parental consent is assumed. This method has been employed in large scale research efforts, particularly in school settings.

A written consent policy, on the other hand, requires an affirmative expression of permission for the child to participate. Written consent works well when parents or children are highly motivated to participate in an activity. But when parents have no strong views one way or the other, the consent form is often perceived as mindless paperwork and may be ignored. Researchers tell us that to shift from passive to written consent will introduce a burden on the individuals that is sufficient to dramatically lower response rates, and it may effectively invalidate the research.

There are several critical research efforts underway in the area of adolescent high risk behavior, such as teen pregnancy and drug abuse. Our ability to approach these issues sensibly, and to assess appropriate Federal interventions, if any, depends on our understanding of the extent of the problem and the dynamics that underlie teen decisionmaking and conduct. Valid research is essential to that understanding, and imposing written consent may jeopardize our ability to conduct valid research.

[1] While active consent can be given orally, as is done for some telephone surveys, it is our understanding that active consent is generally written.

For present purposes, I want to identify three other situations where the requirement for written consent may well be counterproductive.

Safety of the Minor. Written parental consent presents a unique set of problems and barriers in research on troubled families and children, and could potentially place children at risk. The Department of Health and Human Services conducts research on family violence and abuse, including situations where the children are removed from the home due to an abusive situation or ultimately placed into foster care. In these circumstances it may not be safe, feasible or wise to contact the parents for written permission to interview the children. What does parental consent mean when parents no longer accept their responsibility to protect a child?

Children Away From Home. Written parental consent could prove an insurmountable barrier to survey and research efforts involving runaway and homeless youth. HHS has conducted numerous valuable studies examining youth behavior and psychological status that have been used to address the complicated problems of these at-risk teens. While runaway and homeless shelters often notify parents, the administrative burden and expense of obtaining written consent forms would effectively eliminate research of this kind and be incompatible with the best interests of the child.

Law Enforcement Activity. Written parental consent could impede routine law enforcement investigations where children are victims, such as child molestation, child pornography or crimes committed by parents or guardians, as well as actions including individual case examinations and evaluations under every Federally funded service program. Taken literally, it would require written parental consent to question a child who is (or is suspected of being) a victim of abuse or neglect by a parent or guardian. At the very least, the parental consent requirement should not be applied to any evaluation or other activity related to law enforcement or child protective service interventions for the protection of child victims.

I also want to note that with few exceptions, surveys and evaluations are conducted anonymously. In other words, no personal identifier information is collected and the identity of the minor and the family cannot be ascertained. In this circumstance, it is unclear whether written consent is really necessary to protect the privacy of the respondent or the family.

Although the Census Bureau will address this issue more fully, I would add that we concur with their position that subsection (7) of Title IV, which calls for including income in the definition of sensitive questions, should be removed. This aspect of the definition will result in a requirement to obtain written parental consent for many major Federal surveys, which as a matter of course involve questions on household income as a key variable.

Finally, the letter inviting me to testify today asked me to provide detailed information. Unfortunately, a comprehensive compilation of the policies and practices underlying Federal surveys of minors—not to mention those carried out by grant programs, States, school districts, or other recipients of Federal funding—would be resource intensive and time consuming. I was simply unable to respond in the time provided.

I nonetheless commend you on having this hearing and beginning to explore what are very important issues. I would be happy to answer any questions. Thank you Mister Chairman.

Mr. HORN. Representative Maloney, do you have any questions at this point? We have a vote, and we're trying to figure your schedule and our schedule. We're going to have to recess in a minute or two.

Mrs. MALONEY. I'll submit mine into the record to be answered. I have about five, but I'll just hand them in for the record.

Mr. HORN. Would you like to start on any of them, until we hear the 10-minute bell?

Mrs. MALONEY. What surveys does the Census Bureau or other agencies conduct that ask minors about sexual behavior without parental permission?

Ms. KATZEN. I think my colleague from the Census Bureau will be able to address those surveys that the Census Bureau has undertaken. We received with the letter of invitation a request but did not have sufficient time to respond.

Mrs. MALONEY. Mine are directed to the Census Bureau, really.

Mr. BUTZ. Yes, Congresswoman. We do no surveys of minors without prior parental consent—excuse me, of minors with respect to the sensitive questions that you asked about.

Mrs. MALONEY. Would OMB be able to identify surveys which asked about anti-social or demeaning behavior? Does OMB conduct such surveys or know of any?

Ms. KATZEN. We do not conduct any surveys ourselves that touch on these perceived sensitive issues. We do review surveys prepared by all Federal agencies and, in the course of that review, if we were to see questions such as you describe, certainly the bells would go off.

Our function, under the Paperwork Reduction Act, is to assure that questions asked are only those that are appropriate to the legitimate function of the agency and, therefore, we would look for some practical utility and useful function in that regard.

Mr. HORN. Remind me at that point, what is the trigger that forces an agency or requires an agency to send its survey to you for approval? Is it the number of people?

Ms. KATZEN. The number of respondents—10.

Mr. HORN. Ten is the limit.

Ms. KATZEN. Ten.

Mr. HORN. So if they go beyond 10, you see every survey the Federal Government issues?

Ms. KATZEN. Right. Identical questions to 10 or more respondents requires an OMB control number, and the sponsoring agency would come to us for review under the Paperwork Reduction Act. We then do a modified cost-benefit analysis—is this within the mandate of the agency; does it pursue a legitimate mission of the agency; is it likely to yield useful information; is it being done in the least burdensome way; is it tailored to the particular objective of the agency? Only when we are assured that that is the case, would we approve it.

This process is not done in a vacuum. The submissions are made available for public inspection.

We receive public comment on the documents, and any approval lasts for a maximum of 3 years, so if the agency were to want to continue using the instrument, as it is called, it would have to come back for renewal, at which time we again would solicit public comment before we decide to approve it.

Mrs. MALONEY. Would OMB be able to identify surveys which asked about mental or psychological problems, such as was talked about earlier in some of the conversations, potentially embarrassing to the minor or his family?

Ms. KATZEN. Yes. In reviewing the survey, we would look, as I indicated in response to your earlier question, for those types of questions, which would raise a warning flag and then we would go through the process of determining whether they were necessary to be asked, and were being asked in the least intrusive way.

Mrs. MALONEY. Has the Census Bureau received any complaints from parents of minors in surveys which ask about family income?

Mr. BUTZ. Of minors?

Mrs. MALONEY. Yes.

Mr. BUTZ. No, we have not. We receive complaints about our surveys from time to time, but we have not received complaints spe-

cifically about questions asked of minors. Mr. HORN. I'm going to have to leave. Let me just say that what we face is a live quorum call, which is 15 minutes, followed by a 5-minute vote. So I think we're going to have to recess until 5 after 12. Dr. Butz, will you still be available?

Mr. BUTZ. Yes, sir.

Mr. HORN. And Ms. Katzen, what's your situation?

Ms. KATZEN. If you'd like me to stay, I'd be happy to do so.

Mr. HORN. OK, do you have some more questions?

Mrs. MALONEY. No, I don't.

Mr. HORN. All right. I think it would be useful, if you don't mind.

Ms. KATZEN. I'd be happy to.

Mr. HORN. We'll see you at 5 after 12, a quorum having been established.

[Recess.]

Mr. HORN. The hearing will resume and we'll hear from Dr. Butz and then questions.

Mr. BUTZ. Thank you, Mr. Chairman. I'll give somewhat abbreviated remarks. I would appreciate my full testimony being entered into the record. It's a pleasure to be here testifying today on H.R. 11, the Family Reinforcement Act, specifically on Title IV. You listed five specific questions in your letter of invitation to the Census Bureau, and I'll try to answer each of these in turn.

The first question is, what surveys, analyses or evaluations of individual minors are currently conducted with Federal funds? I'm going to restrict my answer to the surveys that are done by the Census Bureau. Those are the ones that I know about. And there are now, or recently have been, three such voluntary surveys. Each of these is sponsored by another Federal agency. We do the work for them, and are paid by them to do the survey.

First, we conduct the National Crime Victimization Survey for the Bureau of Justice Statistics. The purpose of this survey is to collect information about the types and incidents of personal or household crime; monetary losses and physical injuries due to crime; and characteristics of the victim. Interviewers are instructed to obtain a response directly from each member of a household in the sample who is 12 years of age or older.

So this is not a survey aimed specifically at minors, but minors are included in the target sample. A parent is notified by mail ahead of time that the children are being interviewed.

Second, we conducted the youth behavior survey for the National Center for Health Statistics in 1992. This survey is part of the youth risk behavior surveillance system, about which you heard earlier concerning the school-based components. Ours is a household-based component. Household members, ages 12 to 17, were in the survey, and interviewers obtained parental consent to interview the children personally. We obtained the consent either over the telephone, or during the personal visit.

Third, we conducted the teenage attitudes and practices survey, also for the National Center for Health Statistics, which is part of the Centers for Disease Control. We did this in 1989 and again in 1993. A sample of persons 10 to 21 was interviewed, and advance letters were sent to parents and youths in the sample so that a

parent had an opportunity to object. This survey was directed largely at obtaining information about tobacco use.

The second question that you asked is, what are the current policies and procedures for parental consent with these surveys, analyses or evaluations? I can summarize by saying that a parent is notified in each of the three surveys I mentioned that the children are being interviewed. In the case of the survey that asks the most sensitive questions—the second one I mentioned, which is the youth behavior survey—direct parental consent, either oral or written, was required.

In addition to these three reimbursable surveys that actively seek to include minors as respondents, it's important for me to note that in many of the Census Bureau's surveys, and in the Decennial Census of Population and Housing, minors are sometimes the only people we can find at home, or the only household respondents who can speak and understand English. While in these cases we always seek first to obtain answers from an adult householder, the interviewer may obtain information from a minor above 15 years of age in almost all cases, if the interviewer determines that the minor is knowledgeable about the subjects being asked.

Personal visits to households are very costly, and we have determined that accepting information from knowledgeable minors as a last resort is a way to reduce costs and save taxpayers' dollars.

The third question: are there circumstances under which parental consent, as required in the draft legislation, would, in your opinion, not be appropriate? The draft legislation would require written parental consent before a minor can be required to submit to a survey analysis or evaluation that reveals information concerning any of eight subjects listed in the bill.

Several of the questions asked in the three surveys I described above could be interpreted as falling within the subjects listed in the bill. One subject listed in the bill, that is, income, is collected in several Census Bureau surveys and in the Decennial Census. We believe our current policies on parental consent that I very briefly described above are appropriate in each case, and do respect the rights of all parties.

We expect, however, that the provisions of this title would have three effects that are not desirable in terms of collection of valid information. One is, we expect that the provisions of this title would reduce response rates; that is, the proportion of people that actually take part in and respond to the survey. Second, we expect that these provisions would increase costs of survey operations. And third, that these provisions would increase survey bias.

Requiring written consent would reduce the flexibility of statistical agencies, like the Census Bureau, to collect data cost-efficiently. As I said, I believe the bill would also increase data collection costs in the Decennial Census by removing options to obtain data in a cost-efficient manner.

Your fourth question was, what are the impacts that you foresee as a consequence of this legislation? As currently written, the bill could increase data collection costs, as I mentioned.

Other impacts are difficult to judge. The bill does not define "minor;" introduces the concept of "emancipated minor;" a legal status that surely would be difficult for interviewers to determine; and

lists as sensitive subjects some vague concepts such as anti-social, demeaning, and "appraisals of other individuals with whom the minor has a familial relationship."

Some topics, such as political affiliation or religious beliefs, may be inappropriate of the Federal Government to ask, even of adults.

And income, while it may be a sensitive topic, is a fundamental measure, essential to understand and analyze in most every social and economic issue.

The fifth question was, do you have any suggestions for improvements to the legislation? I would like to offer three. First, the language, as I suggest, should be sharpened in a number of details.

Second, we believe the need for written consent should be reexamined. There are occasions when other forms of consent, or no consent, are entirely appropriate.

In particular, we believe there should be exemptions for circumstances where obtaining written consent would be infeasible or might put a child at risk. And last, we believe that income information should be treated differently from the other types of sensitive information covered by the bill.

Thank you, Mr. Chairman, for the opportunity to testify.

[The prepared statement of Mr. Butz follows:]

PREPARED STATEMENT OF WILLIAM P. BUTZ, ASSOCIATE DIRECTOR FOR DEMOGRAPHIC PROGRAMS, BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE

Thank you, Mr. Chairman, for the opportunity to testify before this Subcommittee today on H.R. 11, the Family Reinforcement Act, specifically on Title IV of the bill, which is entitled "Family Privacy Protection." You listed five questions in your letter of invitation and I will answer each of those now.

1. First, What surveys, analyses, or evaluations of individual minors are currently conducted with Federal funds? The Census Bureau conducts or recently has conducted three voluntary surveys in which minors are among the targeted respondents or are the only respondents. Each of these surveys is sponsored by another Federal agency. We conduct the survey and provide the resulting information to the sponsoring agency. The other agency pays for the survey, determines the questions that are asked, and conducts any analyses and evaluations.

We conduct the National Crime Victimization Survey for the Bureau of Justice Statistics. The purpose of this survey is to collect information about the types and incidence of personal or household crime; monetary losses and physical injuries due to crime; and characteristics of the victim. Interviewers are instructed to obtain a response directly from each member of a household in the sample who is 12 years of age or older. A parent is notified that the children are being interviewed.

We conducted the Youth Behavior Survey for the National Center for Health Statistics in 1992. Household members ages 12-17 were in the survey and interviewers obtained parental consent to interview the children personally. We obtained the consent either over the telephone or during the personal visit. Questions in this survey ranged from those about vehicle safety habits, fighting, cigarette smoking, alcohol and drug use, and nutrition, to a battery of questions on sexual behavior, pregnancy, and sexually transmitted diseases that were asked of only those children 14 years old and older.

We also conducted the Teenage Attitudes and Practices Survey for the National Center for Health Statistics in 1989 and 1993. A sample of persons 10-21 was interviewed and advance letters were sent to parents and youths in the sample, so that a parent had an opportunity to object. This survey was directed largely at obtaining information about tobacco use. It included a few questions about the child's closeness to the parent. It did not include questions on drug use or sexual behavior.

In answering this question, I have discussed only those activities in which the Census Bureau is involved. There are other surveys conducted with Federal funds, by public or private organizations other than the Census Bureau, that would be affected by this legislation.

2. Second, What are the current policies and procedures for parental consent with these surveys, analyses or evaluations? To summarize, a parent is notified in each of the three surveys that the children are being interviewed. In the case of the sur-

vey that asked the most sensitive questions, the Youth Behavior Survey, direct parental consent—either oral or written—was required.

In addition to these three reimbursable surveys that actively seek to include minors as respondents, it is important to note that in many of the Census Bureau's surveys and in the decennial census of population, minors are sometimes the only people we can find at home or the only household respondents who can speak and understand English. While in these cases we always seek first to obtain answers from an adult householder, the interviewer may obtain information from a minor (above 15 years of age in most cases) if the interviewer determines the minor is knowledgeable about the subjects being asked. Personal visits to households are very costly and we have determined that accepting information from knowledgeable minors as a last resort is a way to reduce costs and save taxpayers' dollars.

3. Third, Are there circumstances under which parental consent, as required in the draft legislation would, in your opinion, not be appropriate? The draft legislation would require *written* parental consent before a minor can be required to submit to a survey, analysis, or evaluation that reveals information concerning any of eight subjects listed in the bill. Several of the questions asked in the three surveys I described could be interpreted as falling within the subjects listed in the bill (e.g., sexual behavior or attitudes; illegal, anti-social, self-incriminating, or demeaning behavior; appraisals of other individuals with whom the minor has a familial relationship). One subject listed in the bill (income) is collected in several Census Bureau surveys and in the decennial census. We believe our policies on parental consent described above, are appropriate in each case and respect the rights of all parties. We expect, however, that the provisions of this Title would reduce response rates, increase costs, and/or increase survey bias. Requiring *written* consent would reduce the flexibility of statistical agencies, like the Census Bureau, to collect data cost efficiently. It would be harder to make greater use of telephone interviewing techniques and to proceed, in some cases, on the basis of only verbal parental consent to interview minors.

The decennial census has collected income on a sample basis in recent censuses. While, as I said above, we first try to obtain the data from an adult householder, it is sometimes both appropriate and useful to obtain the data from a knowledgeable minor. I believe the bill would increase data collection costs in the census by removing options to obtain data in a cost efficient manner.

4. Fourth, What are the impacts that you foresee as a consequence of this legislation? As currently written, the bill could increase data collection costs. Other impacts are difficult to judge. The bill does not define "minor," introduces the concept of "emancipated minor," a legal status difficult for interviewers to determine, and lists as sensitive subjects some vague concepts (such as "anti-social," "demeaning," and "appraisals of other individuals with whom the minor has a familial relationship"), some topics (such as political affiliation or religious beliefs) that may be inappropriate for the Federal Government to ask even of adults, and income, which, while it may be a sensitive topic, is a fundamental measure essential to analyzing and understanding most every social and economic issue.

5. Fifth, Do you have any suggestions for improvements to the legislation? First, the language should be sharpened in a number of details; the words "anti-social," "demeaning," and "minor" are undefined in the current bill. Second, we believe the need for written consent should be reexamined; there are occasions when other forms of consent, or no consent, are entirely appropriate. In particular, we believe there should be exemptions for circumstances where obtaining written consent would be infeasible or might put a child at risk. Third, we believe that income information should be treated differently from the other types of sensitive information covered by the bill; it is not sensitive for the same reasons, and it is sometimes appropriate to obtain it from knowledgeable minors when the parent is not available to consent.

Thank you, Mr. Chairman, for the opportunity to testify today. I am happy to answer any questions.

Mr. HORN. I'm conscious of Ms. Katzen's schedule, and I'd like to question you for a few minutes, and you'll still make that commitment.

Ms. KATZEN. Thank you very much.

Mr. HORN. Your review process in OMB, is that you personally go over them, or do you have a staff that worries about these surveys? What's the volume of surveys a year in general? And how many of those might concern minors?

Ms. KATZEN. It is the staff, rather than me personally, that reviews the surveys. We have desk officers, as they are known, who will look at both the regulatory and paperwork issues that are raised by the various departments and agencies. For the most part, this is very beneficial because the person reviewing the paperwork already has a keen sense of the programatic missions and the regulatory objectives of the different agencies.

Questions will be raised either to my deputy, or to me if they are of a particularly sensitive nature, or confrontational with the agencies. We try to work in a collegial fashion. And I've been very gratified that very few questions of this sort have been raised to me in the past year. But it is not unheard of for a paperwork issue to come to my attention, at which point I will give it the look that it deserves.

Mr. HORN. Has any type of case that relates to the subject matter before this committee ever come to you on appeal?

Ms. KATZEN. No, and similarly, we have not heard any complaints from any parents that these kinds of issues are creating a problem. My experience has been that many of the people who do research in this area are themselves acutely sensitive to the abilities and privacy interests of the respondents. Also, I was listening to the questions of the earlier panel, and there was a question about how do you keep information confidential; how do you know that that's the way the survey is going to be conducted? I wanted to say that we not only look at the piece of paper that would be sent out, to see whether the data elements are appropriate under our criteria, but we will also review the protocols that accompany them. If there is a consent form, what does it look like? Whether or not there are procedures for accumulating the data, aggregating it, stripping personal identifiers, et cetera, how will those be? We have the track record of most of these agencies, so that it is the whole approach that we are reviewing, rather than just the piece of paper as such.

Mr. HORN. Now, these criteria have been developed, I assume, over, really, five decades or more.

Ms. KATZEN. Yes.

Mr. HORN. Because I remember one reason for this particular office was, Secretary of Agriculture Wallace went out to his native State of Iowa and found a farmer saying, "Look at all the surveys I'm getting from your department." He came back sort of determined to do something about that.

Ms. KATZEN. I think the situation has gotten worse, rather than better in the last four decades.

Mr. HORN. Yes. Could you file the criteria and guidance you use on the question before this committee, which is minors, and their parental consent, if any needed, that you use in evaluating those particular surveys? There must be some regulation or guidance that has been developed over the years in, first, Bureau of the Budget, and now, OMB to deal with this.

Ms. KATZEN. We have tracked fairly carefully the generally thoughtful standard set forth in the Paperwork Reduction Act itself. There are regulations that we have provided to the agencies, so that when they provide a submission to us, as we call it, of the

form that they're going to be using, that they provide the background information.

While it hasn't been legislated that children are a special subpopulation that we need to be sensitive to, I'm not aware of anyone in my office who wouldn't be acutely sensitive to that and review forms with that in mind. I can review our guidelines and see, in light of your questions here, whether we should be more explicit. As I said, however, I have heard no complaints or any problems that have been raised to date about abusive or invasive practices.

Mr. HORN. Right. With that objection, the relevant material from OMB, the policy guidelines, written instructions, that are now in existence will be put in the record at this point. So please furnish us what is relevant in terms of the issue before the committee, which is the degree of parental consent that is involved. Are there certain things by which your staff, certain criteria, are to review agency submission? But that will go in the record at this point.

[Due to high printing costs, the material referred to above can be found in subcommittee files.]

Mr. HORN. Next question—how is the level of consent needed for a minor to participate decided?

Ms. KATZEN. I'm sorry, there was a sneeze right in the middle of your sentence.

Mr. HORN. How is the level of consent needed for a minor to participate decided? And how are you involved in the sense—simply by review of the written survey that is coming to you? And for example, are there education by OMB, your office in particular, of agency officials dealing in this area? How do we do that?

Ms. KATZEN. There are two aspects of this. First, our function is as an oversight or reviewer. We look to the agencies or the departments, in the first instance, to compile the information and prepare the survey. The agencies normally have trained persons on their staff, or available to them, who will help formulate the survey. We will review it, under the Paperwork Reduction Act, under the substantive criteria that I outlined earlier.

In addition, within my office, is the Statistical Policy Office of the United States. The chief statistician reports to me, and the Statistical Policy Office is relevant here because one of the issues about written versus passive consent relates to response rate. We subject all surveys to a sort of screen through the Statistical Policy Office because it is not enough to get the answers. You want to make sure the answers are accurate and generally reflective of the information that you're seeking to obtain.

Our statisticians are able to help us review—again, that's the protocols—what kinds of conditions surround the piece of paper that goes out to ensure quality of data, as well as sufficiency of data response.

Mr. HORN. Very good. We'd appreciate having the specific language from OMB you would like to see in this section, so we have a basis for seeing what the administration policy is on this, and then integrate that with the views we've ascertained through this hearing.

Ms. KATZEN. I would join with my colleague from the Census Bureau in giving serious consideration to the deletion of the requirement for written consent. I think that it is highly problematic in

a number of these areas. There is other tightening language, which he referred to, that I subscribe to as well. And I think we can work with your staff as we proceed to make sure that there are no unintended consequences of what is attempting to be a productive effort.

Mr. HORN. OK. Well, I'm going to release you right now, but we're going to send you a few questions. And we hope you'll be able to answer them in the next week or so——

Ms. KATZEN. Thank you very much for your courtesy.

Mr. HORN. So we can complete the hearing record.

Ms. KATZEN. Thank you.

Mr. HORN. Dr. Butz, let us pursue some of these questions with you. You've heard the testimony, probably, this morning of most witnesses.

Mr. BUTZ. Yes.

Mr. HORN. On behalf of the Bureau of the Census, what are some of your reactions? And what advice would you give the committee, besides what you have in the written testimony? Is there anything that comes to mind that you didn't anticipate in your written testimony?

Mr. BUTZ. Yes, sir. I think two aspects come to mind from having heard the discussion. One is how broad the legislation is. How it appears to have the possibility to affect all surveys—and indeed, that appears to be the intent—not just school-based surveys. So the broadness of it, including, as I suggested, into the operational aspects of doing the Decennial Census, impresses me, having heard the discussion, and bothers me, frankly.

Second, the broadness in terms of the remedy that's involved, that is, the written consent. The universality of that that's intended in the legislation also impresses me. And I would agree with Ms. Katzen, that I think other kinds of consent, of the sort, for example, that we do in two of the three cases that I mentioned, are adequate—adequate a priority and adequate in the sense that we have not received complaints at all when we have carried those out.

Mr. HORN. Let me ask you about the questions on law enforcement officials and health care professionals. Obviously, that's of concern to many legislators, that we not deny information where you might have an emergency situation—you have a critical illness, you have a criminal situation, whatever. Are there any suggestions you might have, because you do administer some of those surveys?

Mr. BUTZ. Well, I don't really have any suggestions of how to word the legislation so as to make possible law enforcement or law investigative activities. We certainly at the Census Bureau try in our survey and census efforts to separate ourselves in fact and in public perception as much as possible from law enforcement activities so as to get as much cooperation as possible.

Mr. HORN. Now, the Census is very familiar with the difficulties of surveying multicultural populations. When I was vice-chair of the U.S. Commission on Civil Rights, as I recall, we did an analysis of both the 1970 Census and the 1980 Census during my period. We found real problems of undercount and so forth and so on. Do you have any advice on surveys going to schoolchildren, where, as

I mentioned earlier, in the case of Long Beach in Los Angeles, 70 different foreign languages are the spoken languages of the home?

How does one really get consent from that diversity of families? The survey goes home in English, although it might go home in Spanish. I've got problems with that, but that's reality. How do we deal with that reality on consent surveys?

Mr. BUTZ. Well, that's a very important point. There is a small body of research that looks at the effect on response rates, that is, on cooperation, of requiring prior, explicit, active parental consent. And the general thrust of this work is that requiring written parental consent reduces samples to about half the size they may otherwise be; and in effect, also results in overrepresentation of whites and underrepresentation of some minority respondents.

The reason for this is that basically requiring prior consent is like adding another survey on top of the one that you're trying to do. And for reasons that I think Dr. Johnston emphasized particularly, some people don't answer the mail: it doesn't look like something one wants to participate in and therefore many don't. And those kinds of responses appear to occur differentially by income level and by other things that are of interest.

And therefore, when one requires that, there is some research that one gets more undercoverage, more differential undercoverage of the sort that we see, for example, in the Decennial Census.

Mr. HORN. Very good. The rest of the questions, I regret to say, because of this vote and I don't want to hold you all up, will have to come in writing. We'd appreciate your response in the next week if we could get it.

Mr. BUTZ. Certainly.

Mr. HORN. I want to thank the staff that put this hearing together on very short notice from the full committee. The counsel to the subommittee, Mark Uncapher; the staff director, Russell George; the deputy staff director for the full committee, Judith Blanchard; and the staff of the subcommittee, Andrew Richardson; Mark Brasher; Anna Young; Wallace Hsueh; and Tony Polzak. And thanks to our hardworking reporter, Mark Handy. Thank you, Mark.

With that, this meeting is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

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